City of Las Cruces®
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Council Action and Executive Summary

Item # 17 **Ordinance/Resolution#** 2588 **Council District:** ___

For Meeting of August 25, 2010
(Adoption Date)

TITLE:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO STATE SHARED GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2010, IN AN AGGREGATE PRINCIPAL AMOUNT OF $_____ FOR THE PURPOSES OF REFUNDING, REFINANCING, PREPAYING AND DISCHARGING THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY CONVENTION CENTER LOAN; PROVIDING THAT THE REFUNDING BONDS WILL BE PAYABLE AND COLLECTIBLE FROM THE PLEDGED CONVENTION CENTER FEE REVENUES, THE PLEDGED LODGERS' TAX REVENUES AND THE PLEDGED STATE SHARED GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE SALE OF THE REFUNDING BONDS; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; PRESCRIBING OTHER DETAILS CONCERNING THE REFUNDING BONDS AND THE FUNDS APPERTAINING THERETO; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; AND REPEALING ALL ACTION IN CONFLICT HEREWITH.

PURPOSE(S) OF ACTION: To authorize the issuance and sale of $_____ Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010 to refund, refinance, and prepay and discharge the City's outstanding New Mexico Finance Authority (NMFA) Convention Center Loan.

Drafter and Staff Contact: Gloria Podruchny		**Department:** Finance Department		**Phone:** 541-2050	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
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:

The existing status of the economy has created a favorable condition of declining interest rates for cities engaged in Revenue Bond issuance. Accordingly, the City of Las Cruces would benefit by refinancing and discharging the outstanding NMFA Convention Center

(Continue on additional sheets as required)

Loan. As a result, the interest cost on the refunded loan will be reduced, and savings and other economies will be achieved.

Because of market fluctuations, it is necessary to expedite the refinancing process to take advantage of the existing favorable environment of lower municipal interest rates.

SUPPORT INFORMATION:

1. Ordinance.

SOURCE OF FUNDING:

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the issuance of $_____ Shared Gross Receipts Tax Refunding Revenue Bonds.

(Continue on additional sheets as required)

2. Vote "No"; this will not approve the Ordinance and the $_____ Shared Gross Receipts Tax Refunding Revenue Bonds will not be issued.
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

None

Draft – July 16, 2010

COUNCIL BILL NO. 11-008
ORDINANCE NO. 2588

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO STATE SHARED GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2010, IN AN AGGREGATE PRINCIPAL AMOUNT OF $_____ FOR THE PURPOSES OF REFUNDING, REFINANCING, PREPAYING AND DISCHARGING THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY CONVENTION CENTER LOAN; PROVIDING THAT THE REFUNDING BONDS WILL BE PAYABLE AND COLLECTIBLE FROM THE PLEDGED CONVENTION CENTER FEE REVENUES, THE PLEDGED LODGERS' TAX REVENUES AND THE PLEDGED STATE SHARED GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE SALE OF THE REFUNDING BONDS; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; PRESCRIBING OTHER DETAILS CONCERNING THE REFUNDING BONDS AND THE FUNDS APPERTAINING THERETO; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; AND REPEALING ALL ACTION IN CONFLICT HEREWITH.

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

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico; and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, except for the 2003 Bonds, the 2005 Bonds, the 2009 NMFA Loan, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, except for the Refunded Loan, the Pledged Convention Center Fee Revenues and the Pledged Lodgers' Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, pursuant to the prepayment provisions contained in Article VIII of the Refunded Loan, the Refunded Loan is currently subject to prepayment, at the option of the City, without penalty or prepayment premium; and

WHEREAS, the City Council hereby determines that issuance of the Bonds for the purpose of refunding, refinancing, prepaying and discharging the Refunded Loan will reduce the

interest costs on the Refunded Loan, will permit the more effective arrangement of debt service requirements 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 Loan on September __, 2010, from the proceeds of the Bonds herein authorized and from other legally available sources; and

WHEREAS, the City has received an offer to purchase the Bonds from _____, as Underwriter of the Bonds, pursuant to the Bond Purchase Agreement; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged Convention Center Fee Revenues and the Pledged Lodgers' Tax Revenues; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged State Shared Gross Receipts Tax Revenues on a parity with the lien thereon of outstanding Parity Bonds; and

WHEREAS, the City will issue the Bonds only after receipt of the required approval of the Bonds by the Department of Finance and Administration of the State of New Mexico; and

WHEREAS, there has been on deposit with the City Clerk and presented to the City Council: the proposed form of Bond Ordinance; the proposed form of Continuing Disclosure Undertaking; the proposed forms of the Preliminary Official Statement and Official Statement; and the proposed form of the Bond Purchase Agreement; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

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

Section 1. Definitions. As used in the Bond 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):

"2003 Bonds" means the "City of Las Cruces, New Mexico Gross Receipts Tax Refunding and Improvement Revenue Bonds, Series 2003" issued in the aggregate principal amount of $12,800,000 and authorized by City Ordinance No. 1989 adopted by the City Council on April 25, 2003.

"2005 Bonds" means the "City of Las Cruces, New Mexico Gross Receipts Tax Revenue Bonds, Series 2005" in the aggregate principal amount of $33,000,000 and authorized by City Ordinance No. 2227 adopted by the City Council on August 10, 2005.

"2009 NMFA Loan" means the loan agreement between the City and the NMFA executed on January 23, 2009 in the aggregate principal amount of $4,999,890 and authorized by City Ordinance No. 2494 adopted by the City Council on December 15, 2008.

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, Sections 3-38-13 to 3-38-24 NMSA 1978, and Sections 5-13-1 to 5-13-15 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including the Bond Ordinance.

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

"Bonds" means the "City of Las Cruces, New Mexico Gross State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010" authorized by this Bond Ordinance.

"Bond Purchase Agreement" means the bond purchase agreement to be entered into between the City and the Underwriter.

"Bond Ordinance" means this City Ordinance No. __.

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

"Charter" means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

"City" means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

"City Council" means the City Council of the City or any future successor governing body of the City.

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

"Continuing Disclosure Undertaking" means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Underwriter.

"Debt Service Fund" means the "City of Las Cruces Gross Receipts Tax Revenue Bonds, Series 2010, Debt Service Fund" established in Section 16 of the Bond Ordinance.

"Depository" means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

"Event of Default" means any of the events stated in Section 25 of the Bond Ordinance.

"Expenses" means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds and the prepayment and discharge of the Refunded Loan, including the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, and 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 accounting fees and expenses.

"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 City as its fiscal year.

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

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

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

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

"Interest Payment Date" means each June 1 and December 1, commencing June 1, 2011.

"Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Bonds, (ii) the maximum annual debt service on the outstanding Bonds, or (iii) 125% of the average annual debt service on the outstanding Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"Moody's" means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

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

"Official Statement" means the final disclosure document relating to the issuance and sale of the Bonds.

"Outstanding" or "outstanding" when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under the Bond Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 28 or Section 31 of the Bond Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

"Parity Bonds" or "Parity Obligations" means the 2003 Bonds, the 2005 Bonds, the 2009 NMFA Loan, the Bonds and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged State Shared Gross Receipts Tax Revenues on a parity with the Bonds, as provided in Section 20 of this Bond Ordinance.

"Paying Agent" means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

"Permitted Investments" means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
   Direct obligations or fully guaranteed certificates of beneficial ownership.

2. Farmers Home Administration (FmHA)
   Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
   Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
   GNMA - guaranteed mortgage-backed bonds
   GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
   Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
   Project Notes
   Local Authority Bonds
   New Communities Debentures - U.S. government guaranteed debentures
   U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
   Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
   Participation Certificates
   Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
   Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated system wide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.

K. Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the City and a dealer bank or securities firm

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or

   b. Banks rated "A" or above by S&P and Moody's.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are:

      (1) Direct U.S. governments, or

      (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

   b. The term of the repo may be up to 30 days

   c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

   d. Valuation of Collateral

      (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

         (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the City:

   a. Repo meets guidelines under state law for legal investment of public funds.

L. 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 State Treasurer.

"Pledged Convention Center Fee Revenues" means the revenues received by the City as a fee on the use of a room within a lodging facility within the City pursuant to Sections 5-13-1 through 5-13-15 NMSA 1978 and City Ordinance No. 2360 adopted on March 5, 2007 (codified as Article VIII, Chapter 16, Sections 421 through 433 of the Las Cruces Municipal Code (1997) as amended and supplemented).

"Pledged Lodgers' Tax Revenues" means up to 50% of the revenues received by the City for the 5% occupancy tax on lodging within the City imposed pursuant to City Ordinance No. 115, adopted on January 17, 1977 and City Ordinance No. 1011 adopted on July 18, 1988 (codified as Article III, Chapter 16, Sections 61 through 70 of the Las Cruces Municipal Code (1997), as amended and supplemented) and Sections 3-38-13 through 3-38-24 NMSA 1978, less the City's costs of collecting and administering such Lodgers' Tax.

"Pledged Revenue Funds" means collectively, "Convention Center Fee Revenue Fund," the "Lodgers' Tax Revenue Fund" and the State Shared Gross Receipts Tax Revenue Fund, established in Section 16 of the of the Bond Ordinance.

"Pledged Revenues" means collectively, the Pledged State Shared Gross Receipts Tax Revenues, the Pledged Convention Center Fee Revenues and the Pledged Lodgers' Tax Revenues.

"Pledged State Shared Gross Receipts Tax Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Bond Ordinance; and provided further that the amount of revenues pledged pursuant to the Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document used by the Underwriter in connection with the initial offering of the Bonds to investors.

"Rating Category" means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise

"Refunding Project" means (1) refunding, refinancing, discharging and prepaying the Refunded Loan on September __, 2010, and (2) paying Expenses related to the issuance of the Bonds and the prepayment and discharge of the Refunded Loan.

"Refunded Loan" means the loan agreement between the City and the NMFA authorized by City Ordinance No. 2401 adopted by the City Council on September 17, 2007 and executed on October 19, 2007 in the aggregate principal amount of $27,361,565.

"Registrar" means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

"Reserve Fund" means the "City of Las Cruces State Shared Gross Receipts Tax Revenue Bonds, Series 2010, Reserve Fund" established by Section 16 of the Bond Ordinance.

"Reserve Fund Insurance Policy" means any policy of insurance, surety bond, letter of credit or other financial instrument issued to the City, the proceeds of which shall be used to prevent deficiencies in the payment of the principal of or interest on the Bonds resulting from insufficient amounts being on deposit in the Debt Service Fund to make the payment of principal of and interest on the Bonds as the same become due. Each policy shall be written by a bank, insurance company or any financial institution experienced in insuring or guaranteeing municipal bonds whose policies of insurance, surety bond, letter of credit or other financial instrument would not adversely affect the rating of the Bonds by Moody's, Fitch and/or S&P to the extent that the Bonds are or are to be so rated and provided that at the time of the issuance of such policy such bank, insurance company or any financial institution shall have received the highest policy claims rating accorded insurers by the A.M. Best Company or any comparable service, if applicable to the provider of the Reserve Fund Insurance Policy, and either of the two highest Rating Categories of Moody's, Fitch and S&P to the extent that each rating agency provides such a rating and is then rating the Bonds.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"State" means the State of New Mexico.

"Underwriter" means _____, the underwriter of the Bonds in accordance with the Bond Purchase Agreement.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of the Bond Ordinance) by the City Council and the officers of the City, directed toward the Refunding Project, the issuance of the Bonds for the Refunding Project and the sale of the Bonds to the Underwriter be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Refunding Project. The Refunding Project and the method of financing the Refunding Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds, including but not limited to, the use of funds on deposit in the reserve account for the Refunded Loan.

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

A. The Refunding Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the Refunding Project from all sources other than the issuance of refunding revenue bonds are not sufficient to defray the cost of the Refunding Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the Refunding Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the Refunding Project, is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The issuance of the Bonds will provide debt service savings for the City.

G. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds for the Parity Bonds and the Refunded Loan.

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

Section 5. Bonds – Authorization and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, refunding revenue bonds to be designated the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010," in an aggregate principal amount of $_____ and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010.

The Bonds shall be issued in an aggregate principal amount of $_____ for the Refunding Project. The forms, terms, and provisions of the Bonds in the form set forth in Section 13 are hereby approved with only such changes therein as are not inconsistent with this Bond Ordinance.

The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Underwriter, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Underwriter, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on June 1, 2011 until their respective maturities. The Bonds shall bear the rates of interest and mature in each of the designated amounts and years as set forth below:

Amounts Maturing	Interest Rate (Per Annum)	Year Maturing
$	%	2011
		2012
		2013
		2014
		2015
		2016
		2017
		2018
		2019
		2020
		2021
		2022
		2023
		2024
		2025
		2026
		2027
		2028
		2029
		2030
		2031
		2032
		2033
		2034
		2035

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

Section 6. Prior Redemption.

A. Optional Redemption. The Bonds maturing on and after June 1, 2021, are subject to prior redemption 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 such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date. Redemption shall be made upon prior notice mailed 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.

B. Notice. Notice of redemption shall be given by the Registrar by sending a copy of such notice by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

C. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 32) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph B of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which

the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph B of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal

office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

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

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

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

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

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

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

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

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Underwriter will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of the Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of the Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in the Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO
STATE SHARED GROSS RECEIPTS TAX REFUNDING REVENUE BONDS
SERIES 2010

Bond No. _____ $_____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_____, 2010	_____

REGISTERED OWNER:_____

PRINCIPAL AMOUNT:_____

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on June 1, 2011, and on December 1 and June 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The

principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $_____ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010 (the "Bonds") issued under and pursuant to City Ordinance No. ___ (the "Bond Ordinance").

The Bonds maturing on and after June 1, 2021, are subject to prior redemption 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 such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date. Redemption shall be made upon prior notice mailed 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.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close

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

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

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

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 held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on a parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Bonds, but additional bonds may not be issued with a lien thereon superior to the lien thereon of the Bonds. Amounts and securities held in the Debt Service Fund and the Reserve Fund, as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds to defray in part the costs of (1) refunding, refinancing, discharging and prepaying the loan agreement between the City and the New Mexico Finance Authority authorized by City Ordinance No. 2401 adopted by the City Council on September 17, 2007 and executed on October 19, 2007 in the aggregate principal amount of $27,361,565 (the "Refunded Loan") on September __, 2010, and (2) paying expenses and costs of issuance related to the issuance of the Bonds and the prepayment and discharge of the Refunded Loan.

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

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

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

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By_____
Mayor or Mayor Pro Tem

By_____
City Clerk

(FACSIMILE SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

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

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By_____
Authorized Officer

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

(Form of Assignment)

For value received, _____ hereby sells, assigns and transfer 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.

_____ _____

Social Security or Tax Identification No. of Assignee_____

Dated: _____

Signature Guarantee:

_____

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

(End of Form of Assignment)

(End of Form of Bond)

Section 14. Period of Project's Usefulness. It is hereby determined and recited that the period of remaining usefulness of the project financed with the proceeds of the Refunded Loan is not less than the final maturity date of the Bonds.

Section 15. Disposition of Proceeds; Completion of Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the Refunding Project.

A. Accrued Interest. First, all moneys, if any, received as accrued interest on the Bonds shall be deposited into the Debt Service Fund, to be applied to the payment of interest next due on the Bonds.

B. Expenses. Second, an amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

C. Prepayment of Refunded Loan. Third, all remaining proceeds derived from the sale of the Bonds [and any amounts transferred from the reserve fund of the Refunded Loan] shall be used to refund, refinance, prepay and discharge the Refunded Loan on September __, 2010.

[D. Reserve Fund. No deposit of proceeds of the Bonds, other City moneys or a Reserve Fund Insurance Policy into the Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph E of Section 17 of this Bond Ordinance.]

E. Refunding Project Completion. As soon as practicable after completion of the Refunding Project, and in any event not more than 60 days after completion of the Refunding Project, any proceeds remaining unspent (other than any amount retained by the City for any Refunding Project costs not then due and payable) shall be transferred and deposited in the Debt Service Fund and used by the City to pay principal and interest on the Bonds as same become due.

F. Underwriter Not Responsible. The Underwriter of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

Section 16. Funds and Accounts. The City hereby creates and continues the following special and separate funds:

A. Pledged Revenue Funds. The City hereby creates [continues] the following special and separate funds: 1. State-Shared Gross Receipts Tax Revenue Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund" (the "State Shared Gross Receipts Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

2. Convention Center Fee Revenue Fund. The "City of Las Cruces, New Mexico Convention Center Fee Revenue Fund" (the "Convention Center Fee Revenue Fund") to

be maintained by the City, into which the City shall deposit the Pledged Convention Center Fee Revenues.

3. Lodgers' Tax Revenue Fund. The "City of Las Cruces, New Mexico Lodgers' Tax Revenue Fund" (the "Lodgers' Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged Lodgers' Tax Revenues.

B. Debt Service Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010, Debt Service Fund" (the "Debt Service Fund") to be maintained by the City.

C. Reserve Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010, Reserve Fund" (the "Reserve Fund") to be maintained by the City.

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

A. Administration of Pledged Revenue Funds. So long as any of the Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues:

B. Debt Service Fund Payments. The following amounts shall be withdrawn from the Convention Center Fee Revenue Fund, and from the Lodgers' Tax Revenue Fund, if the moneys in the Convention Center Fee Revenue Fund are not sufficient to make the required payment, and, if the aggregate amount such moneys are still insufficient, then from the State Shared Gross Receipts Tax Revenue Fund (and on a parity with other outstanding Parity Bonds), and shall be concurrently credited to the Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

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

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Bonds then outstanding.

C. Credit. In making the deposits required to be made into the Debt Service Fund, if there are any amounts then on deposit in the Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

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

[E. Reserve Fund. No deposit shall be required in the Reserve Fund so long as the Pledged [State Shared Gross Receipts Tax] Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. If the Pledged [State Shared Gross Receipts Tax] Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall acquire a Reserve Fund Insurance Policy in an amount equal to the Minimum Reserve or shall begin making substantially equal monthly deposits in the Reserve Fund from the first legally available Pledged [State Shared Gross Receipts Tax] Revenues so that after 24 months an amount equal to the Minimum Reserve will be held in the Reserve Fund. After funding the Reserve Fund in an amount equal to the Minimum Reserve, no additional payments need be made into the Reserve Fund so long as the moneys therein shall equal not less than the Minimum Reserve. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph F of this Section, only to prevent deficiencies in the payment of the principal of and interest on the Bonds resulting from failure to deposit into the Debt Service Fund sufficient funds to pay the principal and interest as the same accrue.]

F. Defraying Delinquencies in the Debt Service Fund and Reserve Fund. If, in any month, the City shall, for any reason, fail to pay into the Debt Service Fund the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the Debt Service Fund in such month from the Reserve Fund (if moneys are then on deposit in the Reserve Fund) equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Debt Service Fund from the Reserve Fund are not equal to the amount required to be paid into the Debt Service Fund for such month, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Debt Service Fund, in addition to the normal payment required to be paid in such month, from the first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Debt Service Fund from the Reserve Fund, if any, shall be replaced in the Reserve Fund from the first Pledged Revenues thereafter received not required to be otherwise applied. If, in any month, the City shall, for any reason, fail to pay into the Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the Bonds; provided, however, that any moneys at any time in excess of the Minimum Reserve in the Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the Reserve Fund shall not be invested in a manner which could cause the Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Reserve Fund exceeds the Minimum Reserve, all amounts in excess of the Minimum Reserve shall be transferred to the Debt Service Fund and used to pay principal of and interest on the Bonds.

G. Payment of Parity Gross Receipts Tax Obligations. Concurrently with the payment of the Pledged [State Shared Gross Receipts Tax] Revenues required by paragraphs B, E and F of this Section, any amounts on deposit in the [State Shared Gross Receipts Tax Revenue Fund] shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to the 2003 Bonds, the 2005 Bonds, the 2009 NMFA Loan and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged [State Shared Gross Receipts Tax] Revenues, as applicable, as the same accrue. If funds on deposit in the [State Shared Gross Receipts Tax Revenue Fund]are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Bonds and any other outstanding Parity Bonds, then the available funds in the [State Shared Gross Receipts Tax Revenue Fund]will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the [State Shared Gross Receipts Tax Revenue Fund], on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H. Termination Upon Deposits to Maturity. No payment shall be made into the Debt Service Fund or the Reserve Fund if the amounts (excluding any amount in the Reserve Fund represented by a Reserve Fund Insurance Policy) in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective maturities or applicable redemption dates, in which case moneys in the Debt Service Fund and the Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same accrue, and any moneys in excess thereof in the Debt Service Fund and the Reserve Fund may be used as provided below.

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

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

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the Reserve Fund shall be invested in accordance with paragraph C of this Section 18 and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the Reserve Fund may be invested only in Permitted Investments. The City shall annually on or about June 30 of each year, commencing on the first June 30 succeeding funding of the Reserve Fund, value the Reserve Fund on the basis of the current fair market value of deposits and investments credited to the Reserve Fund. For purposes of determining the amount on deposit in the Reserve Fund, any Reserve Fund Insurance Policy held by, or the benefit of which is available to, the City as security for the Bonds shall be deemed to be a deposit in the face amount of the policy or the stated amount of the credit facility provided, except that, if the amount available under a Reserve Fund Insurance Policy has been reduced as a result of a payment having been made thereunder or as a result of the termination, cancellation or failure of such Reserve Fund Insurance Policy and not reinstated or another Reserve Fund Insurance Policy provided, then, in valuing the Reserve Fund, the value of such Reserve Fund Insurance Policy shall be reduced accordingly. If, upon any valuation, the value of the Reserve Fund exceeds the Minimum Reserve, the excess amount shall be withdrawn and deposited into the Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the Reserve Fund may be used to pay the final installments of principal and interest on the Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the Reserve Fund or a payment has been made under a Reserve Fund Insurance Policy constituting all or a portion of the Reserve Fund, and deposited into the Debt Service Fund to prevent a default on the Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn, together with interest, if any, required under the terms of the Reserve Fund Insurance Policy, or so much as shall be required to restore the Reserve Fund to the Minimum Reserve and to pay such interest, if any. Such repayment shall be made as required by paragraph F of Section 17.

The City may in part, or in whole, replace amounts in the Reserve Fund with a Reserve Fund Insurance Policy.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in the Debt Service Fund and the Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, the Bond Ordinance. The Bonds constitute an irrevocable and first lien, but not an exclusive first lien on the Pledged Convention Center Fee Revenues and the Pledged Lodgers' Tax Revenues. Additionally, the Bonds constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged State Shared Gross Receipts Tax Revenues on a parity with the lien thereon of the 2003 Bonds, the 2005 Bonds, the 2009 NMFA Loan and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged State Shared Gross Receipts Tax Revenues.

Section 20. Sale of the Bonds.

A. Underwriter of Bonds. The Bonds are hereby sold to the Underwriter in accordance with the Bond Purchase Agreement at a total "purchase price" of $_____ (representing the par amount of the Bonds [less a discount [plus a premium of $_____]].

B. Net Effective Interest Rate. The net effective interest rate on the Bonds is _____%, which is less than the statutory maximum of 12%.

Section 21. Additional Bonds Payable from Pledged Revenues.

A. Parity Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged State Shared Gross Receipts Tax Revenues on a parity with the lien of the Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are required to have then been accumulated in the Debt Service Fund and the Reserve Fund (if any accumulation is then required in the Reserve Fund) as required by Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged State Shared Gross Receipts Tax Revenues, and (3) the Parity Bonds proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b)

any amount of the reserve fund requirement for any issue of outstanding Parity Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds for which such reserve fund was created.

B. Certification or Opinion Regarding State Shared Gross Receipts Tax Revenues. A written certificate or opinion by the City Treasurer, that the Pledged State Shared Gross Receipts Tax Revenues are sufficient to pay the required amounts under the test in Paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Bonds. The City Treasurer may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from any of the Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Bonds.

D. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Bonds.

Section 22. Refunding Bonds. The provisions of Section 21 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged State Shared Gross Receipts Tax Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in Paragraph D of Section 21 of this Bond Ordinance and except as provided in Paragraphs B and C of this Section.

B. Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged State Shared Gross Receipts Tax Revenues on a parity with the lien of the Bonds, unless:

(1) The lien on the Pledged State Shared Gross Receipts Tax Revenues of the outstanding obligations so refunded is on a parity with the lien on the Pledged State Shared Gross Receipts Tax Revenues of the Bonds; or

(2) The refunding obligations are issued in compliance with Paragraph A of Section 20 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of 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 other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Paragraph A of Section 21 of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged State Shared Gross Receipts Tax Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in Paragraph C of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Bonds.

Section 23. Equality of Parity Bonds. The Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged State Shared Gross Receipts Tax Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

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

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

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

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

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

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

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

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

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 32 of the Bond Ordinance.

I. Debt Service Fund and Reserve Fund. The Debt Service Fund and Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in the Bond Ordinance.

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

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

L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate

payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate fund shall be fee and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25. Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Notwithstanding any other provisions of the Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 26. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

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

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in the Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

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

Section 27. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of the Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under the Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28. Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of the Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of the Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to

pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 38 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and the final Official Statement, and the execution thereof, of the Bond Purchase Agreement, the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Underwriter or bond counsel. The use and distribution of the Preliminary Official Statement and the Official Statement in connection with the sale of the Bonds to the public is hereby authorized, approved and acknowledged.

Section 31. Prepayment and Notice with Respect to the Refunded Loan. 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 prepay the Refunded Loan on September __, 2010. The City is hereby obligated so to exercise such option, which option shall be deemed to have been exercised irrevocably upon delivery of the Bonds. A notice of prepayment of the Refunded Loan shall be delivered by the City's financial advisor as provided in Article VIII of the Refunded Loan.

Section 32. Amendment of Bond Ordinance. The Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Underwriter, the provisions of the Bond Ordinance may be amended with the written consent of the Underwriter, with respect to any changes which are not inconsistent with the substantive provisions of the Bond Ordinance. In addition, the Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A. An extension of the maturity of any Bond; or

B. A reduction of the principal amount or interest rate of any Bond; or

C. The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

D. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or

E. The establishment of priorities as between Bonds issued and outstanding under the provisions of the Bond Ordinance; or

F. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 33. Defeasance. When all principal, interest and prior redemption premium, if any, in connection with the Bonds hereby authorized have been duly paid, the pledge and lien for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of the Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal, interest and prior redemption premium, if any, as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

The Bonds shall be deemed outstanding within the meaning of the Bond Ordinance unless and until they are in fact paid and retired or the criteria set forth in this Section 33 is met.

Section 34. Ordinance Irrepealable. After any of the Bonds are issued, the Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 35. Severability Clause. If any section, paragraph, clause or provision of the Bond 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 the Bond Ordinance.

Section 36. 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 37. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in the Bond Ordinance (set out in Section 38 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and the Bond Ordinance shall be in full force and effect in accordance with law.

Section 38. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in the Bond 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 City Ordinance No. ___, duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on August __, 2010, relating to the authorization and issuance of the City's State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2010 (the "Bonds"). Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO STATE SHARED GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2010, IN AN AGGREGATE PRINCIPAL AMOUNT OF $_____ FOR THE PURPOSES OF REFUNDING, REFINANCING, PREPAYING AND DISCHARGING THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY CONVENTION CENTER LOAN; PROVIDING THAT THE REFUNDING BONDS WILL BE PAYABLE AND COLLECTIBLE FROM THE PLEDGED CONVENTION CENTER FEE REVENUES, THE PLEDGED LODGERS' TAX REVENUES AND THE PLEDGED STATE SHARED GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT IN CONNECTION WITH THE SALE OF THE REFUNDING BONDS; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; PRESCRIBING OTHER DETAILS CONCERNING THE REFUNDING BONDS AND THE FUNDS APPERTAINING THERETO; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; AND REPEALING ALL ACTION IN CONFLICT HEREWITH.

A general summary of the subject matter contained in the Ordinance is set forth in its title.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary 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

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst City Attorney

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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 __, 2010, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Ordinance, a copy 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]