City of Las Cruces
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 18 **Ordinance/Resolution#** 2630

For Meeting of August 15, 2011 (Ordinance First Reading Date)

For Meeting of September 6, 2011 (Adoption Date)

TITLE: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,045,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF REFUNDING THE GASOLINE TAX IMPROVEMENT REVENUE BONDS, SERIES 2000A AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE PLEDGED GASOLINE TAX REVENUES OF THE GOVERNMENTAL UNIT DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT, PROVIDING FOR THE DISTRIBUTION OF THOSE PLEDGED GASOLINE TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

PURPOSE(S) OF ACTION:

To authorize City staff to refinance the remaining balance of the 2000 Gasoline Tax Improvement Revenue Bonds with the New Mexico Finance Authority.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Robert Scaling	**Department/Section:** Finance/Treasury	**Phone:** 575-541-2035
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This action is recommended to take advantage of significantly lower interest rates in the capital markets and realize the resulting savings on a portion of the City's bonded debt.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Ordinance.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*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 *(# and Fund Name)* Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: *(Fund #)* in the amount of $_____ for FY__.
	No	XX	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A					

OPTIONS / ALTERNATIVES:

REFERENCE INFORMATION:

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

1. Resolution No. 12-019

COUNCIL BILL NO. 12-008
ORDINANCE NO. 2630

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,045,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF REFUNDING THE GASOLINE TAX IMPROVEMENT REVENUE BONDS, SERIES 2000A AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE PLEDGED GASOLINE TAX REVENUES OF THE GOVERNMENTAL UNIT DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT, PROVIDING FOR THE DISTRIBUTION OF THOSE PLEDGED GASOLINE TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project and the Project will result in debt service savings and other economies for the Governmental Unit; and

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

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

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

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues may be redirected to the NMFA or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the NMFA (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than the Pledged Revenues, no revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

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

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES THAT:

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

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

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

"Authorized Officers" means the Mayor, Manager, Finance Director and Treasurer, and Clerk of the Governmental Unit.

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

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

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

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

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

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

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

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

"General Gasoline Tax Revenues" means the revenues distributed monthly to the City by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6.9 NMSA 1978, at the rate authorized (currently ten and thirty-eight hundredth's percent of the net receipts attributable to gasoline taxes, exclusive of penalties and interest) from the proceeds of the gasoline tax imposed by the Gasoline Tax Act, Section 7-13-1 through 7-13-15 NMSA 1978.

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

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

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

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

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

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

"Loan Agreement" means the Loan Agreement dated the Closing Date between the NMFA and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the NMFA.

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

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

"Loan Agreement Principal Amount" means the original principal amount of the Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit, and administered by the Trustee pursuant to the Indenture.

"Loan Agreement Reserve Requirement" means with respect to the Loan, the amount shown as the Loan Agreement Reserve Requirement on the Term Sheet, which amount does not ~~exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) one~~ hundred-twenty five percent (125%) of the average Aggregate Annual Debt Service Requirement under the Loan Agreement, or (iii) the maximum Aggregate Annual Debt Service Requirement under the Loan Agreement.

"Municipal Road Gasoline Tax Revenues" means the revenues distributed monthly to the City by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6.27 NMSA 1978 at the rate authorized (currently five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax) subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978.

"NMFA" means the New Mexico Finance Authority.

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

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

"Ordinance" means this Ordinance No. _____ as adopted by the Governing Body on September 6, 2011 approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

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

"Pledged Revenues" means the General Gasoline Tax Revenues and the Municipal Road Gasoline Tax Revenues.

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

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

"Project" means the refunding, refinancing, discharging and paying the Refunded Bonds and payment of related professional fees as described in the Term Sheet.

"Refunded Bonds" means the $2,240,000 City of Las Cruces, New Mexico Gasoline Tax Improvement Revenue Bonds, Series 2000A maturing on and after June 1, 2012.

~~"State" means the State of New Mexico.~~

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

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

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

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

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

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

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

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

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

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

F. The Governmental Unit will finance the Project with the net proceeds of the Loan.

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

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

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the principal amount of $2,045,000, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the Project and to pay the Processing Fee and related professional fees.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of $2,045,000, shall be payable in installments of principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on June 1, 2012, at the rates designated in Exhibit "B" to the Loan Agreement.

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

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

meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

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

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

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

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

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

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

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

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

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid to the NMFA for deposit in the NMFA Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest and other amounts due under the Loan Agreement.

B. Loan Agreement Reserve Account. An amount equal to the Loan Agreement Reserve Requirement shall be deposited in the Loan Agreement Reserve Account on the date of execution and delivery of the Loan Agreement. The amounts in the Loan Agreement Reserve Account are pledged exclusively as additional security for payment of the principal of and interest on the Loan Agreement and this Ordinance creates a lien thereon. Second to the payments required by paragraph A hereof, there shall be credited monthly to the Loan Agreement Reserve Account from the Pledged Revenues, such amount or amounts as are necessary to maintain the Loan Agreement Reserve Account as a continuing reserve in an amount not less than the Loan Agreement Reserve Requirement to meet possible deficiencies in the NMFA Debt Service Account. The moneys in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used except as hereinafter provided in paragraphs C and D of this Section, only to prevent deficiencies in the payment of the principal of and interest on the Loan resulting from the failure to credit to the NMFA Debt Service Account sufficient funds to pay said principal and interest as the same become due. Amounts in the Loan Agreement Reserve Account in excess of the Loan Agreement Reserve Requirement shall be withdrawn from the Loan Agreement Reserve Account and deposited into the NMFA Debt Service Account (including investment income therefrom) and shall be used to pay the principal of or interest on the Loan or any obligations refunding the Loan. Also, second to the payments required by paragraph A of this Section and coequal and on a parity with payments into the Loan Agreement Reserve Account, there may be credited on a periodic basis of not more frequently than monthly, an amount necessary to establish, maintain or reestablish reasonable reserve funds for additional Parity Obligations or necessary to reimburse a credit facility provider for amounts due in connection with a draw on any debt service reserve surety bond or similar credit facility for any such additional Parity Obligations.

C. Defraying Delinquencies in the NMFA Debt Service Account and Loan Agreement Reserve Account. If, on any Loan Agreement Payment Date, the Governmental Unit shall, for any reason, fail to pay into the NMFA Debt Service Account the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the NMFA Debt Service Account on such date from the Loan Agreement Reserve Account equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the NMFA Debt Service Account from the Loan Agreement Reserve Account are not equal to the amount required to be paid into the NMFA Debt Service Account on such date, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the NMFA Debt Service Account, from the first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the NMFA Debt Service Account from the Loan Agreement Reserve Account shall be replaced in the Loan Agreement Reserve Account from the first Pledged Revenues thereafter received not required to be otherwise applied. If, in any month, the Governmental Unit shall, for any reason, fail to pay into the Loan Agreement Reserve Account 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 Loan Agreement Reserve Account 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 Loan; provided, however, that any moneys at any time in excess of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account may be withdrawn therefrom and applied to any other lawful purpose.

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

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

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

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

Section 12. Amendment of Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional ~~consideration, but only with the prior written consent of the NMFA.~~

Section 13. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable

until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

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

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. _____ duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico, on September 6, 2011. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

CITY OF LAS CRUCES, NEW MEXICO
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,045,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF REFUNDING THE GASOLINE TAX IMPROVEMENT REVENUE BONDS, SERIES 2000A AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE PLEDGED GASOLINE TAX REVENUES OF THE GOVERNMENTAL UNIT DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT, PROVIDING FOR THE DISTRIBUTION OF THOSE PLEDGED GASOLINE TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

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

DONE AND APPROVED this 6th day of September, 2011.

APPROVED

By: _____
Ken Miyagishima, Mayor

ATTEST:

By: _____
Esther Martinez, City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

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

EXHIBIT "A"

Meeting Agenda
September 6, 2011
City Council Meeting

(See attached)

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

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

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on September 6, 2011, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2011.

CITY OF LAS CRUCES, NEW MEXICO

_____
Esther Martinez, City Clerk

[SEAL]