



1           **EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT**  
2           **AGREEMENT.**

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

5           **WHEREAS**, the City is a legally and regularly created, established, organized  
6 and existing municipal corporation under the general laws of the State and its Charter,  
7 as amended; and

8           **WHEREAS**, the City has Home Rule Powers; and

9           **WHEREAS**, the Council has determined and hereby determines that the Project  
10 may be financed with amounts borrowed under the Loan Agreement and that it is in the  
11 best interest of the City and its residents that the Loan Agreement and Intercept  
12 Agreement be executed and delivered and that the financing of the design, construction,  
13 equipping and furnishing of the Project take place by executing and delivering the Loan  
14 Agreement and Intercept Agreement; and

15           **WHEREAS**, the Council has determined that it may lawfully pledge the Pledged  
16 Revenues for the payment of amounts due under the Loan Agreement; and

17           **WHEREAS**, the Pledged Revenues have not heretofore been pledged to secure  
18 the payment of any obligation; and

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

22           **WHEREAS**, the Loan Agreement shall be executed and delivered pursuant to  
23 Sections 3-31-1 through 3-31-12 NMSA 1978, and with a first lien, but not necessarily  
24 an exclusive first lien, on the Pledged Revenues; and

25           **WHEREAS**, the City desires to provide that distributions of the Pledged  
26 Revenues be redirected to the NMFA or its assigns pursuant to the Intercept Agreement  
27 between the City and the NMFA for the payment of amounts due under the Loan  
28 Agreement; and

29           **WHEREAS**, there have been presented to the Council and there presently are on  
30 file with the City Clerk this Ordinance and the forms of the Loan Agreement and  
31 Intercept Agreement, which are incorporated by reference and considered to be a part

1 hereof; and

2 **WHEREAS**, the Council hereby determines that the Project to be financed by the  
3 Loan is to be used for governmental purposes of the City and will not be used for  
4 purposes which would cause the Loan Agreement to be deemed a “private activity  
5 bond” as defined by the Internal Revenue Code of 1986, as amended; and

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

13 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY**  
14 **OF ALBUQUERQUE:**

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

19 “Act” means the general laws of the State, including Sections 3-31-1 through 3-  
20 31-12 and Sections 59A-53-1 through 59A-53-17 NMSA 1978, as amended, and  
21 enactments of the Council relating to the Loan Agreement and Intercept Agreement,  
22 including this Ordinance.

23 “Aggregate Annual Debt Service Requirement” means the total principal, interest,  
24 Administrative Fee, and premium, if any, payments due and payable pursuant to the  
25 Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged  
26 Revenues for any one Fiscal Year.

27 “Authorized Officers” means the City’s Mayor, Chief Administrative Officer,  
28 Director of Department of Finance and Administrative Services, Treasurer, or other  
29 officer or employee of the City when designated by a certificate signed by the Mayor of  
30 the City from time to time.

31 “Bonds” means public project revolving fund revenue bonds, if any, issued

1 hereafter by the NMFA and specifically related to the Loan Agreement and the Loan  
2 Agreement Payments.

3 “City” means the City of Albuquerque, New Mexico.

4 “Closing Date” means the date of execution, delivery and funding of the Loan  
5 Agreement.

6 “Code” means the Internal Revenue Code of 1986, as amended, and the  
7 applicable regulations thereunder.

8 “Completion Date” means the date of final payment of the cost of the Project.

9 “Council” means the City Council, or any future successor governing body of the  
10 City.

11 “Distributing State Agency” means the New Mexico State Treasurer, authorized  
12 to distribute the Pledged Revenues to or on behalf of the City.

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

15 “Expenses” means the costs of issuance of the Loan Agreement and the Bonds,  
16 if any, and the periodic and regular fees and expenses incurred by the NMFA and the  
17 Trustee in administering the Loan Agreement, including legal fees.

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

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

25 “Indenture” means the General Indenture of Trust and Pledge dated as of June 1,  
26 1995, as amended and supplemented, by and between the NMFA and the Trustee, or  
27 the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as  
28 supplemented, by and between the NMFA and the Trustee, as determined by the NMFA  
29 pursuant to a Pledge Notification or Supplemental Indenture, as defined in the  
30 Indenture.

31 “Intercept Agreement” means the Intercept Agreement effective on the Closing

1 Date between the City and the NMFA providing for the direct payment of Pledged  
2 Revenues by the Distributing State Agency to the NMFA in amounts sufficient to pay  
3 principal and interest due on the Loan Agreement, and any amendments or  
4 supplements to the Intercept Agreement.

5 “Loan” means the funds to be loaned to the City by the NMFA pursuant to the  
6 Loan Agreement.

7 “Loan Agreement” means the Loan Agreement effective on the Closing Date  
8 between the NMFA and the City which provides for the financing of the Project and  
9 requires payments by or on behalf of the City to the NMFA and/or the Trustee.

10 “Loan Agreement Payments” means, collectively the principal component and the  
11 interest component to be paid by the City as payment of the Loan Agreement as shown  
12 on Exhibit “B” of the Loan Agreement.

13 “NMFA” means the New Mexico Finance Authority.

14 “NMFA Debt Service Account” means the account in the name of the City within  
15 the Debt Service Fund established under the Indenture and held by NMFA to pay  
16 principal and interest on the Loan Agreement as the same become due.

17 “NMSA” means the New Mexico Statutes Annotated, 1978 Compilation, as  
18 amended and supplemented.

19 “Ordinance” means this Ordinance adopted by the Council on December 20,  
20 2010 approving the Loan Agreement and the Intercept Agreement and pledging the  
21 Pledged Revenues to the payment of the Loan Agreement as shown on the Term  
22 Sheet, as supplemented and amended from time to time.

23 “Parity Obligations” mean the Loan Agreement and any other obligations,  
24 hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged  
25 Revenues and issued with a lien on the Pledged Revenues on parity with the Loan  
26 Agreement.

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

1           “Processing Fee” means the processing fee to be paid on the Closing Date by  
2 the City to the NMFA for the costs of originating and servicing the loan, as shown on the  
3 Term Sheet.

4           “Program Account” means the account in the name of the City established under  
5 the Indenture and held by the Trustee for deposit of the net proceeds of the Loan  
6 Agreement for disbursal to the City for payment of the costs of the Project.

7           “Project” means the design, construction, equipping and furnishing of Fire Station  
8 No. 7 within the City, and the payment of the Processing Fee.

9           “State” means the State of New Mexico.

10          “Term Sheet” means Exhibit “A” to the Loan Agreement.

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

14          **Section 2. Ratification.** All action heretofore taken (not inconsistent with the  
15 provisions of the Ordinance) by the Council and officers of the City directed toward the  
16 design, construction, equipping and furnishing of the Project and the execution and  
17 delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby is,  
18 ratified, approved and confirmed.

19          **Section 3. Authorization of the Project, the Loan Agreement and Intercept**  
20 **Agreement.** The acquisition of the Project and the method of financing the Project  
21 through execution and delivery of the Loan Agreement and Intercept Agreement are  
22 hereby authorized and ordered. The Project is for the benefit and use of the City.

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

25                 A.     The Project is needed to meet the needs of the City and its  
26 residents and the issuance and delivery of the Loan Agreement is necessary or  
27 advisable.

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

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

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

5 E. The Project and the execution and delivery of the Loan Agreement  
6 and the Intercept Agreement pursuant to the Act to provide funds for the financing of the  
7 Project are necessary and in the interest of the public health, safety, morals and welfare  
8 of the residents of the City.

9 F. The City will complete the Project, in whole or in part, with the  
10 proceeds of the Loan.

11 G. The City does not have any outstanding obligations payable from  
12 Pledged Revenues which it has incurred or will incur prior to the initial execution and  
13 delivery of the Loan Agreement and the Intercept Agreement.

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

16 **Section 5. Loan Agreement and Intercept Agreement - Authorization and**  
17 **Detail.**

18 A. Authorization. This Ordinance has been adopted by the affirmative  
19 vote of three-fourths of all of the members of the Council. For the purpose of protecting  
20 the public health, conserving the property, protecting the general welfare and prosperity  
21 of the residents of the City and completing the Project, it is hereby declared necessary  
22 that the City, pursuant to the Act, execute and deliver the Loan Agreement and Intercept  
23 Agreement evidencing a special, limited obligation of the City to pay a principal amount  
24 of \$1,500,000, and the execution and delivery of the Loan Agreement and Intercept  
25 Agreement are hereby authorized. The City shall use the proceeds of the Loan to  
26 finance the Project and to pay the Processing Fee. The Project will be owned by the  
27 City.

28 B. Detail. The Loan Agreement and Intercept Agreement shall be in  
29 substantially the forms of the Loan Agreement and Intercept Agreement presented at  
30 the meeting of the Council at which this Ordinance was adopted. The Loan shall be in  
31 an original aggregate principal amount of \$1,500,000, shall be payable in installments of

1 principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement  
2 and bear interest payable on June 1 and December 1 of each year, commencing on  
3 June 1, 2011, at the rates designated in Exhibit "B" to the Loan Agreement, which rates  
4 include the Administrative Fee payable to the NMFA.

5 **Section 6. Approval of Loan Agreement and Intercept Agreement.** The  
6 forms of the Loan Agreement and Intercept Agreement as presented at the meeting of  
7 the Council at which this Ordinance was adopted are hereby approved. Authorized  
8 Officers are hereby individually authorized to execute, acknowledge and deliver the  
9 Loan Agreement and Intercept Agreement with such changes, insertions and omissions  
10 as may be approved by such individual Authorized Officers, and the Clerk is hereby  
11 authorized to affix the seal of the City on the Loan Agreement and Intercept Agreement  
12 and attest the same. The execution of the Loan Agreement and Intercept Agreement by  
13 an Authorized Officer shall be conclusive evidence of such approval.

14 **Section 7. Special Limited Obligation.** The Loan Agreement shall be  
15 secured by a pledge of the Pledged Revenues as set forth in the Loan Agreement and  
16 shall be payable solely from the Pledged Revenues. The Loan Agreement, together  
17 with interest thereon and other obligations of the City thereunder, shall be a special,  
18 limited obligation of the City, payable solely from the Pledged Revenues as provided in  
19 this Ordinance and the Loan Agreement and shall not constitute a general obligation of  
20 the City or the State, and the holders of the Loan Agreement may not look to any  
21 general or other fund of the City for payment of the obligations thereunder. Nothing  
22 contained in this Ordinance or in the Loan Agreement, or any other instruments, shall  
23 be construed as obligating the City (except with respect to the application of the  
24 Pledged Revenues), as incurring a pecuniary liability or a charge upon the general  
25 credit of the City or against its taxing power, nor shall a breach of any agreement  
26 contained in this Ordinance, the Loan Agreement, or any other instrument impose any  
27 pecuniary liability upon the City or any charge upon its general credit or against its  
28 taxing power. The Loan Agreement shall never constitute an indebtedness of the City  
29 within the meaning of any State constitutional provision or statutory limitation and shall  
30 never constitute or give rise to a pecuniary liability of the City or a charge against its  
31 general credit or taxing power. Nothing herein shall prevent the City from applying other

1 funds of the City legally available therefor to payments required by the Loan Agreement,  
2 in its sole and absolute discretion.

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

4 A. Program Account and NMFA Debt Service Account. The City  
5 hereby consents to creation of the NMFA Debt Service Account to be held and  
6 maintained by the NMFA and to the Program Account to be held and maintained by the  
7 Trustee pursuant to the Indenture, each in connection with the Loan. The City hereby  
8 approves of the deposit of a portion of the proceeds of the Loan Agreement in the  
9 Program Account and the NMFA Debt Service Account, and the payment of the  
10 Processing Fee directly to the NMFA, as set forth in the Term Sheet.

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

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

17 The City will complete the Project with all due diligence.

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

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

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

30 A. Deposit of Pledged Revenues. Pursuant to the Intercept  
31 Agreement the Pledged Revenues shall be paid to the NMFA for deposit in the NMFA

1 Debt Service Account and remittance to the Trustee in an amount sufficient to pay the  
2 Loan Agreement Payments, and other amounts due under the Loan Agreement,  
3 including amounts sufficient to cure any deficiencies in the NMFA Debt Service  
4 Account, which amounts shall be deposited in the NMFA Debt Service Account.

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

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

19 **Section 10. Lien on Pledged Revenues.** Pursuant to the Loan Agreement, the  
20 Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged,  
21 and the City grants a security interest therein for, the payment of the principal, interest,  
22 if any, and any other amounts due under the Loan Agreement, subject to the uses  
23 hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement  
24 constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the  
25 Pledged Revenues as set forth herein and in the Loan Agreement. The City shall not  
26 create a lien on the Pledged Revenues superior to that of the Loan Agreement.

27 **Section 11. Authorized Officers.** Authorized Officers are hereby individually  
28 authorized and directed to execute and deliver any and all papers, instruments,  
29 opinions, affidavits and other documents and to do and cause to be done any and all  
30 acts and things necessary or proper for carrying out this Ordinance, the Loan  
31 Agreement, the Intercept Agreement and all other transactions contemplated hereby

1 and thereby. Authorized Officers are hereby individually authorized to do all acts and  
2 things required of them by this Ordinance, the Loan Agreement and the Intercept  
3 Agreement for the full, punctual and complete performance of all the terms, covenants  
4 and agreements contained in this Ordinance, the Loan Agreement and the Intercept  
5 Agreement, including but not limited to, the execution and delivery of closing documents  
6 in connection with the execution and delivery of the Loan Agreement and the Intercept  
7 Agreement, and the publication of the summary of this Ordinance set out in Section 17  
8 of this Ordinance (with such changes, additions and deletions as may be necessary).

9 **Section 12. Amendment of Ordinance.** Prior to the date of the initial delivery  
10 of the Loan Agreement to the NMFA, the provisions of this Ordinance may be  
11 supplemented or amended by ordinance or resolution of the Council with respect to  
12 any changes which are not inconsistent with the substantive provisions of this  
13 Ordinance. This Ordinance may be amended without receipt by the City of any  
14 additional consideration, but only with the prior written consent of the NMFA.

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

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

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

27 **Section 16. Effective Date.** Upon due adoption of this Ordinance, it shall be  
28 recorded in the book of the City kept for that purpose, authenticated by the signatures of  
29 the Mayor and Clerk of the City, and the title and general summary of the subject matter  
30 contained in this Ordinance (set out in Section 17 below) shall be published in a  
31 newspaper which maintains an office and is of general circulation in the City, or posted

1 in accordance with law, and said Ordinance shall be in full force and effect thereafter, in  
2 accordance with law.

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

6 (Form of Summary of Ordinance for Publication)

7 City of Albuquerque, New Mexico

8 Notice of Adoption of Ordinance

9 Notice is hereby given of the title and of a general summary of the subject matter  
10 contained in an Ordinance, duly adopted and approved by the Council of the City of  
11 Albuquerque, New Mexico (the "City"), on December 20, 2010. Complete copies of the  
12 Ordinance are available for public inspection during the normal and regular business  
13 hours of the City Clerk, Albuquerque/Bernalillo County Government Center, One Civic  
14 Plaza, Albuquerque, New Mexico.

15 The title of the Ordinance is:

16

17 AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A  
18 LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN  
19 THE CITY OF ALBUQUERQUE (THE "CITY") AND THE NEW MEXICO  
20 FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION  
21 OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$1,500,000,  
22 TOGETHER WITH INTEREST AND ADMINISTRATIVE FEES THEREON,  
23 FOR THE PURPOSE TO DESIGN, CONSTRUCT, EQUIP AND FURNISH  
24 FIRE STATION NO. 7 LOCATED WITHIN THE CITY AND PAYING A LOAN  
25 PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE  
26 PRINCIPAL OF, AND INTEREST DUE UNDER THE LOAN AGREEMENT  
27 SOLELY FROM A PLEDGE OF DISTRIBUTIONS OF FIRE PROTECTION  
28 FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE  
29 CITY PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR  
30 THE DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES TO BE  
31 REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO

1 FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF  
2 PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT  
3 PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORMS  
4 OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; RATIFYING  
5 ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION  
6 INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE  
7 TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION  
8 AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT  
9 AGREEMENT.

10 The title sets forth a general summary of the Ordinance. This notice constitutes  
11 compliance with Sections 6-14-4 through 6-14-7 NMSA, 1978.

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13 **WITNESS** my hand as of this 20<sup>th</sup> day of December, 2010.

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City Clerk

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(End of Form of Summary for Publication)

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