



Legislation Text

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CITY of ALBUQUERQUE
NINETEENTH COUNCIL

COUNCIL BILL NO. F/S O-10-33

ENACTMENT NO. _____

SPONSORED BY: Ken Sanchez

ORDINANCE

F/S An Ordinance Authorizing The Execution of a Loan Agreement Between The City of Albuquerque and The New Mexico Finance Authority, Evidencing A Special, Limited Obligation of The City To Pay A Principal Amount of \$1,441,625, Together With Interest Thereon, For The Purpose of Designing, Constructing, Equipping and Furnishing Fire Station No. 7; Providing For The Payment of The Principal of, and Interest Due Under The Loan Agreement Solely From A Pledge of Distributions of Fire Protection Fund Revenues Distributed By The State Treasurer (Sanchez)

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALBUQUERQUE (THE "CITY") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$1,441,625, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DESIGNING, CONSTRUCTING, EQUIPPING AND FURNISHING FIRE STATION NO. 7 LOCATED WITHIN THE CITY AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM A PLEDGE OF DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE CITY PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR THE DISTRIBUTIONS OF FIRE

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

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

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

WHEREAS, the City has Home Rule Powers; and

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

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

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

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

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

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

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

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the NMFA for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project and pay the Processing Fee, 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.

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

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

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12 and Sections 59A-53-1 through 59A-53-17 NMSA 1978, as amended, and enactments of the Council relating to the Loan Agreement and 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 the Pledged Revenues for any one Fiscal Year.

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

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the NMFA and specifically related to the Loan Agreement and the Loan Agreement Payments.

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

“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.

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

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

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

“Expenses” means the costs of issuance of the Loan Agreement and the Bonds, if any, and the periodic and regular fees and expenses incurred by the NMFA and the Trustee 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 City as its fiscal year.

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

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

“Intercept Agreement” means the Intercept Agreement effective on the Closing Date between the City and the NMFA providing for the direct payment of Pledged Revenues by the Distributing State Agency to the NMFA in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

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

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

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

“NMFA” means the New Mexico Finance Authority.

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

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

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

“Parity Obligations” mean the Loan Agreement and any other obligations, 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.

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

“Processing Fee” means the processing fee to be paid on the Closing Date by the City 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 City established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursement to the City for payment of the costs of the Project.

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

“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 the Ordinance) by the Council and officers of the City directed toward designing, constructing, equipping and furnishing of the Project and the execution and delivery of the Loan Agreement and

Intercept Agreement, be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and Intercept Agreement.

The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the City.

Section 4. Findings. The City 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 City and its residents and the issuance and delivery of the Loan Agreement is necessary or advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of completing 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, morals and welfare of the residents of the City.

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

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

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

I. The Loan Agreement will not be executed and delivered by the City until the State Fire Marshal has approved the use of the Pledged Revenues by the City in connection with the Project.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Council. For the purpose of protecting the public health,

conserving the property, protecting the general welfare and prosperity of the residents of the City and completing the Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the City to pay a principal amount of \$1,441,625, and the execution and delivery of the Loan Agreement and Intercept Agreement are hereby authorized. The City shall use the proceeds of the Loan to finance the Project and to pay the Processing Fee. The Project will be owned by the City.

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 Council at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of \$1,441,625, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, commencing on May 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 Intercept Agreement as presented at the meeting of the Council at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and 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 City on the Loan Agreement and Intercept Agreement and attest the same. The execution of the Loan Agreement and 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 a 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 City thereunder, shall be a special, limited obligation of the City, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the City or the State, and the holders of the Loan Agreement may not look to any general or other fund of the City for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the City (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the City 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 City or any charge upon its general credit or against its taxing power.

The Loan Agreement shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing herein shall prevent the City from applying other funds of the City 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 and NMFA Debt Service Account. The City hereby consents to creation of the NMFA Debt Service Account to be held and maintained by the NMFA and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The City hereby approves of the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the NMFA Debt Service Account, and the payment of the Processing Fee directly to the NMFA, as set forth in the Term Sheet.

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

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

The City will complete the Project with all due diligence.

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

C. NMFA and Trustee Not Responsible. The NMFA and the Trustee shall in no manner be responsible for the application or disposal by the City 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. Pursuant to the Intercept Agreement the 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 the Loan Agreement Payments, and other amounts due

under the Loan Agreement, including amounts sufficient to cure any deficiencies in the NMFA Debt Service Account, which amounts shall be deposited in the NMFA Debt Service Account.

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

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the NMFA Debt Service Account shall be transferred to the City on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the City, the Constitution and laws of the State, as the City 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 City grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and in the Loan Agreement. The City shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

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

may be necessary).

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

Section 13. Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as 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 City kept for that purpose, authenticated by the signatures of the Mayor and Clerk of the City, 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 City, or posted in accordance with law, and said 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 Albuquerque, 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 an Ordinance, duly adopted and approved by the Council of the City of Albuquerque, New Mexico

(the "City"), on December 20, 2010. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Albuquerque/Bernalillo County Government Center, One Civic Plaza, Albuquerque, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALBUQUERQUE (THE "CITY") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$1,441,625, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DESIGNING, CONSTRUCTING, EQUIPPING AND FURNISHING FIRE STATION NO. 7 LOCATED WITHIN THE CITY AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM A PLEDGE OF DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE CITY PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR THE DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORMS OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

WITNESS my hand as of this 20th day of December, 2010.

City Clerk

(End of Form of Summary for Publication)

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