

352  
**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 23 Ordinance/Resolution# 10-020 Council District:     

For Meeting of July 6, 2009  
 (Adoption Date)

**A RESOLUTION APPROVING THE AGREEMENT CONCERNING A REGIONAL RECYCLING PROGRAM AND REGIONAL SOLID WASTE COLLECTION SERVICES PROVIDED BY SOUTH CENTRAL SOLID WASTE AUTHORITY.**

**PURPOSE(S) OF ACTION:**

Create regional recycling administered by South Central Solid Waste Authority ("Authority"), and allow the City to contract with the Authority to provide solid waste collection services in the County.

<b>Name of Drafter:</b> Marcia B. Driggers		<b>Department:</b> Legal		<b>Phone:</b> 541-2128	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Originating Department		528-3511	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

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

The City and South Central Solid Waste Authority approved a third amended and restated Joint Powers Agreement to establish a Regional Solid Waste Authority, to provide for financing; and further expanding the purposes and powers of the Authority and other modifications on April 6, 2009.

The Utilities Board approved the idea to move toward a regional recycling approach with the Authority and to create a regional recycling program administered by the Authority and to enable the Authority to offer solid waste collection services within the County with the consent of the County Commission.

City and Authority staffs in conjunction with their attorneys have developed an Agreement for the Authority to provide recycling services to the City and for the City to provide solid waste collection services to the Authority as set forth in the Agreement attached as Exhibit "A" to the Resolution.

The Utilities Board recommended approval of this Agreement in Las Cruces Utilities Board Resolution No. 08-09-065 on June 11, 2009.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
N/A	N/A	N/A

1. Resolution.
2. Agreement.
3. Las Cruces Utilities Board Resolution No. 08-09-065.

**OPTIONS / ALTERNATIVES:**

1. **VOTE "YES"** – Will approve the Agreement between the City and the Authority Concerning a Regional Recycling Program and Regional Solid Waste Collection Services Provided by South Central Solid Waste Authority.
2. **VOTE "NO"** – Will not approve the Agreement.

**RESOLUTION NO. 10- 020****A RESOLUTION APPROVING THE AGREEMENT CONCERNING A REGIONAL RECYCLING PROGRAM AND REGIONAL SOLID WASTE COLLECTION SERVICES PROVIDED BY SOUTH CENTRAL SOLID WASTE AUTHORITY.**

The City Council is informed that:

**WHEREAS**, the City and South Central Solid Waste Authority (the "Authority") approved a third amended and restated Joint Powers Agreement to establish a Regional Solid Waste Authority to provide for financing; and further expanding the purposes and powers of the Authority and other modifications on April 6, 2009; and

**WHEREAS**, the Utilities Board approved the idea to move toward a regional recycling approach with the Authority and to create a regional recycling program administered by the Authority and to enable the Authority to offer solid waste collection services within the County with the consent of the County Commission; and

**WHEREAS**, City and Authority staffs in conjunction with their attorneys have developed an Agreement for the Authority to provide recycling services to the City and for the City to provide solid waste collection services to the Authority as set forth in the Agreement; and

**WHEREAS**, the Utilities Board recommended approval of this Agreement in Resolution No. 08-09-065 on June 11, 2009.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT**, the City Council hereby approves the Agreement Concerning a Regional Recycling Program and Regional Solid Waste Collection Services Provided by South Central Solid Waste Authority.

(II)

THAT, City staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

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

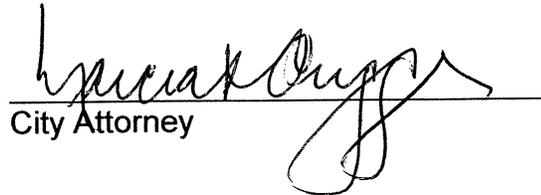
{SEAL}

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

Asst.   
City Attorney

**AGREEMENT CONCERNING A REGIONAL RECYCLING PROGRAM  
AND REGIONAL SOLID WASTE COLLECTION SERVICES  
PROVIDED BY SOUTH CENTRAL SOLID WASTE AUTHORITY**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the **South Central Solid Waste Authority** (“Authority”) and the **City of Las Cruces** (“City”) as follows:

**BACKGROUND**

1. In 1994 the City Council approved Resolution No. 95-176 which approved a Joint Powers Agreement (“1994 JPA”) between the City and the County of Doña Ana (“County”) to establish a permanent regional solid waste authority. The 1994 JPA limited the purpose of the Authority to only operating a regional solid waste landfill and related facilities such as the solid waste transfer station located at 2855 West Amador Avenue, west of the intersection of Motel Boulevard and Amador Avenue.
2. In 2009, the Third Amended and Restated Joint Powers Agreement (“2009 JPA”) was approved by the City and by the County. The 2009 JPA expanded the purpose and powers of the Authority to include offering and operating regional recycling and solid waste collection services for customers within the regional boundaries of the Authority, provided the necessary governing public bodies give their approval and consent.
3. The New Mexico Solid Waste Act, NMSA 1978, § 74-9-1 *et seq.*, and the New Mexico Solid Waste Authority Act, NMSA 1978, § 74-10-1 *et seq.*, are intended to be construed together and with the understanding that the provisions of the Solid Waste Authority Act are to be broadly construed to accomplish the legislative determination set forth in NMSA 1978, § 74-10-2 and allows the Authority to offer a regional recycling program inside and outside of the City limits and to further offer regional solid waste collection services outside of the City limits.

4. The Authority was created in accordance with the New Mexico Joint Powers Act, NMSA 1978, § 11-1-1 *et seq.*, as well as the aforementioned Solid Waste Act and Solid Waste Authority Act. Section 11-1-3 of the Joint Powers Act provides that two or more public agencies, such as the City and the County, may jointly create an entity with the authority to exercise any power common to them. Both the City and the County can provide refuse collection and disposal services. The City is so authorized by NMSA 1978, § 3-48-3 (2003) and the County is so authorized by NMSA 1978, § 4-56-1 (1967). Therefore, the Authority is permitted to exercise a power common to the City and the County as provided in the 2009 JPA and may directly or by contract offer refuse collection and disposal services to customers within the unincorporated portions of the County with the consent of the County Commission.

5. The parties seek to create a regional recycling program to be administered by the Authority and which shall provide recycling for residential, multi-family, commercial and institutional properties, along with various other community collection locations.

6. The parties further seek to authorize the Authority to offer solid waste collection services within the unincorporated portions of the County, and with the consent of the County Commission as set forth in this Agreement.

### CONDITIONS

#### **I. REGIONAL SOLID WASTE COLLECTION SERVICES:**

##### **A. Authority Responsibilities**

1. The Authority will contract with the City for the City to provide solid waste collection services within the unincorporated portions of the County with the consent of the County Commission and subject to any service area limitations which may be established by the County Commission. The City will deliver the collected solid waste to the Authority who

will also market its residential and commercial solid waste collection services within the service area established by the County Commission.

2. Property owners within the County who voluntarily contract with the Authority for solid waste collection services will be solid waste customers of the Authority. The Authority will charge its County customers, who live within developments that abut the City limits, a rate equal to what the City charges its comparable solid waste customers. The Authority may charge its County customers, who live within developments that do not abut the City limits, a rate 1.35 times what the City charges its comparable solid waste customers or whatever rate that the Authority deems to be fair and reasonable in consultation with the City.

3. The Authority may charge its County customers a surcharge as approved by the Authority's Board of Directors reasonably necessary to offset increased administrative fees and collection.

**B. City Responsibilities**

1. The level of solid waste collection service provided to the Authority's County customers by the City will be comparable to the level of service provided to City customers as of the date of this Agreement including but not limited to the provision of roll-out containers and grappler services, and the frequency of pickups.

2. The City is the fiscal agent for the Authority and will continue to provide billing services to the Authority's solid waste customers within the County until such time as the City ceases to be the fiscal agent for the Authority. If the City ceases to be the fiscal agent for the Authority, the Authority may negotiate with the City to continue to provide billing services for solid waste collection to the Authority's customers. If the City chooses not to provide billing

services for such solid waste collection, the Authority will then provide its own billing services for its customers.

3. Should the City annex any area where the Authority provides contracted solid waste collection services through the City, those County customers will be transferred to become City solid waste customers.

## II. REGIONAL RECYCLING:

### A. Existing Recycling Programs

#### 1. City:

(a) The City operates a voluntary recycling program consisting of community collection containers for newspapers, metal and aluminum cans, and corrugated cardboard, which containers are located within the parking lot of various commercial establishments within the City limits.

(b) The City provides containers for corrugated cardboard and office paper to City commercial and institutional solid waste customers for a monthly fee.

(c) The City also collects recyclables at a City administered recycling center ("Recycling Center") located at 2855 West Amador Avenue adjacent to the City's Jacob Hands Wastewater Treatment Facility. The Recycling Center accepts newspapers, aluminum and metal cans, corrugated cardboard and brown paper bags, plastic No. 1 and No. 2 containers, computers, telephone books, office paper, household hazardous waste, tires with a small surcharge, and appliances and scrap metal.

(d) The City's existing recycling program employs a coordinator and ten (10) employees and owns the equipment described on Exhibit "A" and Exhibit "B" attached hereto.

2. **Authority:**

The Authority does not currently operate a recycling program.

B. **Commitments to Regional Recycling**

In order to implement an effective regional recycling program, the parties commit to the following:

1. **City Commitments:**

(a) Equipment to be Sold. The City will sell to the Authority the recycling equipment listed on Exhibit "A" for the total adjusted sum of \$404,735.00. Said sum will be deposited directly into the City's solid waste fund. The Authority will purchase the equipment from the City detailed on Exhibit "A" in its "as is" condition. The City will then provide the Authority with a collective bill of sale for all of the equipment listed on Exhibit "A" that does not have individual City inventory numbers. The Authority will also purchase the motor vehicles from the City detailed on Exhibit "A" in their "as is" condition. The City will then title the motor vehicles in the name of the Authority for all of the vehicular equipment listed on Exhibit "A" and, for those motor vehicles lacking titles, the City will provide the Authority with individual bills of sale.

(b) Equipment to be Leased. The City will lease at no cost to the Authority the recycling equipment itemized on Exhibit "B." The lease term will be perpetual unless terminated as provided for in this Agreement. This equipment was acquired by the City with grant monies and cannot be sold to the Authority due to limitations within the grant funding agreement.

(c) Recycling Center. The City authorizes the Authority to operate and maintain the City's Recycling Center in a safe condition and in compliance with all

applicable regulations for such a center, and to use the Recycling Center for any permissible Authority purpose. However, the City will not pay the Authority to maintain and operate the Recycling Center, nor will the Authority pay the City for use of the Center. In lieu of payment to the City for its use of the Center, the Authority will assume all of the operation and maintenance responsibilities for the Recycling Center, which responsibilities have previously been performed by the City.

(d) Financial Subsidy by the City. The City's solid waste residential service rate currently contains a \$3.09 per month charge for the City's existing recycling program. The City will dedicate the recycling component charge from all of the City's monthly residential solid waste customers, including the Authority's solid waste customers within the County, and for any other solid waste customer whose rates may hereafter include a recycling component charge to the Authority solely for the Authority's recycling program. Payments will be made monthly to the Authority no earlier than the first month after the Authority has completed its closed, non-competitive recruitment for the positions that it will need for its recycling program from among the City recycling employees whose positions are being abolished as provided hereafter in sub-paragraph (f) and after those selected employees have taken positions with the Authority. The City currently has approximately 21,609 residential (non-senior) solid waste customers so the estimated subsidy from the City for the Authority's recycling program for FY 10 will be approximately \$66,772.00 per month or \$801,262.00 per year based on \$3.09 per month per residential (non-senior) solid waste customers. The solid waste residential service rate for senior citizens does not currently include a recycling component charge. The City cannot guarantee what, if any, future financial subsidy will be made for the benefit of the Authority's recycling program because the recycling component charge is part of

the City's existing solid waste rate for residential (non-senior) customers. All of the City's solid waste rates will be reviewed as part of the rate filings to be made by the Utilities Department to the Utilities Board in 2009. The City's Utilities Board is empowered to set utility rates and it will be up to the Board to establish the amount, if any, allocated for recycling and for which classes of customers the recycling allocation would apply.

(e) City Commercial and Institutional Recycling Customers. The City will provide written notification to its commercial and institutional recycling customers, who pay the City a monthly fee for recycling container service, notifying them of a specific date that the City is transferring its recycling services offered to City commercial and institutional customers and notifying them that the Authority will offer recycling services at a rate to be established by the Authority's Board of Directors, or will contract out those recycling services pursuant to a request for proposal process.

(f) City Recycling Employees. The City's recycling employee positions will be terminated, and reasonable attempts will be made to reassign or transfer the recycling personnel designated for separation due to abolishment of their current positions as provided for in Section 909 of the City's Personnel Manual. The Authority will proceed with a closed, non-competitive recruitment for the positions that it will need for its recycling program from among the City recycling employees whose positions are being abolished.

(g) Composting Program. The City currently operates a composting program that is not part of this Agreement. For purposes of this Agreement, compost and green waste are not considered to be recyclable materials. The Authority shall not operate a composting program within the City limits during the term of this Agreement without the City's express written consent.

(h) Accounting for Recycling Program. For so long as the City is the fiscal agent for the Authority and for so long as the Authority receives a financial subsidy from the recycling component charge within any of the City solid waste rates, the City's annual financial report for the Authority will include a separate account or fund showing the receipts, expenditures and balance for the Authority's recycling program.

(i) Cost of Service Analysis. The cost of service analysis for the 2009 solid waste rate case to be filed by the Utilities Department with the Utilities Board will be provided by the City. It is proposed by the Utilities Department as part of its solid waste rate case to be filed with the Utilities Board in 2009 that the cost for recycling will be shown as a pass through recycling fee on City utility bills to its solid waste customers and to the Authority's solid waste customers within the County. For so long as the Authority desires to receive a financial subsidy from City solid waste rates for the Authority's recycling program, the Authority will prepare at its sole expense whatever cost of service analysis is required as part of future City solid waste rate case filings before the Utilities Board.

**2. Authority Commitments:**

(a) Recycling Program. The Authority will offer a recycling program within the City limits at least comparable to the City's existing recycling program as of the date of the Agreement or as may otherwise agreed to by the City and the Authority in recognition of changing recycling market conditions for the term of this Agreement.

(b) Accounting for Recycling Program. If the City ceases to be the fiscal agent for the Authority and the Authority receives a financial subsidy from the recycling component charge within any City solid waste rates, the Authority's annual financial report will

include a separate account or fund showing the receipts, expenditures and balance for the Authority's recycling program.

(c) Cost of Service Analysis. If the City ceases to be the fiscal agent for the Authority and the Authority desires to receive a financial subsidy from City solid waste rates, the Authority will prepare at its sole expense whatever cost of service analysis is required as part of future City solid waste rate filings before the Utilities Board.

(d) Leased Equipment. The Authority will use the leased equipment listed on Exhibit "B" solely for the collection and processing of recyclable materials related to the Authority's recycling program; will maintain the leased equipment in a good state of repair, normal wear and tear excepted; will insure the leased equipment under its personal property insurance policy and insure against theft or destruction on a replacement costs basis; and will not sublease or assign its interest in any of the leased equipment to any third party without the City's express written consent. The Authority will return to the City any of the leased equipment that becomes obsolete, worn-out or unusable for the City to dispose of in compliance with any grant funding restrictions and in compliance with NMSA Section 3-54-2 as amended.

(e) Limitations on Use. The Authority will use the Recycling Center solely for the collection and processing of recyclable materials and for the maintenance of equipment related to any permissible Authority purpose, and in compliance with other restrictions set forth herein.

### 3. **Recycling Center:**

(a) Condition of Center. The City states that the Center is suitable for its intended purpose as a facility to collect and process recyclable materials, and that the City has disclosed to the Authority any reason that the City knows or reasonably should know that the

Center might not be suitable for such purposes. The Authority states that it has inspected the Center and has independently confirmed that the Center is suitable for the collection and processing of recyclable materials.

(b) Operation and Maintenance of Center. The Authority will be responsible for maintaining the Center in a safe operating condition. If the Authority fails to maintain the Center in a safe operating condition and the City is made aware of such unsafe operating condition, the City may terminate the Agreement if the Authority fails to remedy such unsafe condition within thirty (30) days of written notice from the City to do so. Safe operating conditions means operating and maintaining the Center in compliance with all applicable federal, state and local regulations. However, it is specifically agreed that the City is not obligated to monitor the Authority's operation and maintenance of the Center for compliance with any applicable regulations.

(c) Alterations. The Authority will obtain the City's written permission before making any alterations or improvements to the Center of a permanent nature. Such alterations or improvements shall be made in compliance with applicable state and local codes.

(d) Ownership of Improvements. All alterations and improvements made to or placed in the Center by the Authority are and will remain the Authority's property except as the parties may mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the Center and are, in fact, removed by the Authority prior to termination of this Agreement or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature that

cannot be removed without undue damage to the Center shall immediately become the City's property except as the parties may mutually agree otherwise in writing.

(e) Condition of Center Upon Surrender. At the termination of this Agreement, the Authority will surrender the Center in the condition in which it was at the inception of this Agreement excepting deterioration caused by reasonable use and ordinary wear and tear, or alterations or improvements made with the City's express written approval.

(f) Right of Entry. The City or its agent has a right to enter the Center to inspect to insure that the Authority is operating and maintaining the Center in a safe operating condition, however under no circumstances is the City obligated or required to inspect the Center.

### **III. LIABILITY:**

A. Neither party will be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

B. Each party will be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to this Agreement.

### **IV. COMMERCIAL GENERAL LIABILITY INSURANCE:**

During the term of this Agreement, the Authority will procure and maintain commercial general liability insurance in an amount of not less than the limits of the New Mexico Tort Claims Act as amended with the City named as an additional insured with the same coverage as the Authority to cover any claim for personal injury or property damage including attorney fees

and costs which may arise out of the Authority's use of the Recycling Center and of the leased equipment listed in Exhibit "B" hereto. The Authority will not commence to use the Recycling Center or the leased equipment under this Agreement until it has provided the City with proof of the insurance required herein and such insurance has been approved by the City.

**V. TERM AND TERMINATION:**

The term of this Agreement is perpetual but the Agreement may be terminated by either party without cause on twelve (12) months written notice to the other party and may be terminated by the City with cause as provided for in Section II (B) (3) (b).

**VI. AMENDMENT:**

This Agreement shall not be altered, changed, or amended except in a writing signed by the parties.

**VII. ENTIRE AGREEMENT:**

This Agreement incorporates all the agreements, covenants, and understanding between the parties and all such covenants, promises, and agreements have been merged into this Agreement. No prior agreement, covenant or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement or upon appropriate written amendment to this Agreement.

**VIII. DISPUTE RESOLUTION:**

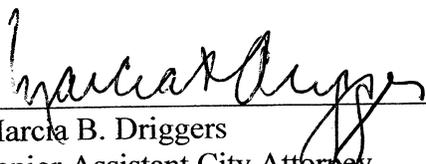
Should a dispute arise between the parties regarding this Agreement, the parties shall first attempt to resolve their dispute by mediation. Should mediation be unsuccessful, the dispute shall be settled by binding arbitration. The parties shall agree to a mutually acceptable arbitrator who shall render a final, binding decision upon the parties. The prevailing party, as determined

by the arbitrator, shall be entitled to payment of reasonable attorney's fees, costs and expenses in addition to any other award conferred at the arbitration.

**CITY OF LAS CRUCES**

By: \_\_\_\_\_  
Terrence A. Moore, City Manager

**APPROVED BY:**

  
\_\_\_\_\_  
Marcia B. Driggers  
Senior Assistant City Attorney

**SOUTH CENTRAL SOLID WASTE  
AUTHORITY**

By: \_\_\_\_\_  
Miguel Silva, Chairman

**APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY**

\_\_\_\_\_  
Jerome O'Connell  
Attorney for South Central Solid Waste Authority

RECYCLING EQUIPMENT VALUE SPREADSHEET- 5/09						
Inventory #	Description	Quantity	Book Value		Fleet Estimate	Adjustment
22490	98 S-10 Pickup	1	\$0.00		\$1,725.00	
25701	99 Ford PU w/ Tommy lift	1	\$0.00		\$1,975.00	
23897	Compactor - Plastic	1	\$0.00		\$4,785.00	
28426	04 Autocar/Mammoth Front Loader	1			\$90,000.00	
27167	02 International Roll off	1	\$9,380.92		\$80,000.00	\$40,000.00
20775	91 Case Backhoe 4X4	1	\$0.00		\$14,000.00	\$4,000.00
30961	06 Cat Forklift	1	\$19,886.47		\$18,000.00	
31251	08 Bobcat w attachments	1	\$29,000.00		\$25,000.00	-\$1,000.00
28121	Recycle Trailer	1	\$350.00		\$950.00	
	<b>SUB TOTAL</b>		<b>\$58,617.39</b>		<b>\$236,435.00</b>	
			<b>New Cost</b>	<b>50%</b>	<b>Total Value</b>	
none	Recycling Dumpsters 4 or 5 yd	48 + 15	?	\$400.00	\$25,200.00	
none	Recycling Dumpsters 6 yd	160 + 24	\$1,195.00	\$597.50	\$109,940.00	
none	Recycling Dumpsters 8 yd	3	?	\$450.00	\$1,350.00	
none	Recycle Tub Roll off w/Gondola	12 + 3	\$7,000.00	\$3,500.00	\$52,500.00	
none	Recycling Open Top Containers	8	\$4,000.00	\$2,000.00	\$16,000.00	
none	Tip Containers	12	\$400.00	\$200.00	\$2,400.00	
none	Paint Sprayer	1	\$2,150.00	\$1,075.00	\$1,075.00	
none	32 Gallon containers	189	\$30.00	\$15.00	\$2,835.00	
none	Hazardous Storage Container	1		\$0.00	\$0.00	
none	Oil Tanks	2		\$0.00	\$0.00	
none	Bulb Crusher - Foulescent/CFL	1		\$0.00	\$0.00	
	<b>SUB TOTAL</b>				<b>\$211,300.00</b>	
	<b>TOTAL</b>				<b>\$447,735.00</b>	<b>\$43,000.00</b>
	<b>TOTAL w ADJUSTMENT</b>				<b>\$404,735.00</b>	

# EXHIBIT A



**LAS CRUCES UTILITIES BOARD RESOLUTION NO. 08-09-065****A RESOLUTION RECOMMENDING APPROVAL OF THE AGREEMENT CONCERNING A REGIONAL RECYCLING PROGRAM AND REGIONAL SOLID WASTE COLLECTION SERVICES PROVIDED BY SOUTH CENTRAL SOLID WASTE AUTHORITY.**

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

**WHEREAS**, the City and South Central Solid Waste Authority ("Authority") approved a third amended and restated Joint Powers Agreement to establish a Regional Solid Waste Authority to provide for financing; and further expanding the purposes and powers of the Authority and other modifications on April 6, 2009; and

**WHEREAS**, the Utilities Board approved the idea to move toward a Regional Recycling approach with the Authority and to create a regional recycling program administered by the Authority and to enable the Authority to offer solid waste collection services within the County with the consent of the County Commission; and

**WHEREAS**, City and Authority staffs in conjunction with their attorneys have developed an Agreement for the Authority to provide Recycling Services to the City and for the City to provide solid waste collection services to the Authority as set forth in the Agreement attached as Exhibit "A"; and

**WHEREAS**, City Council approval is required because the utilities Board is not authorized by its By-Laws to sell City recycling equipment as provided for in the Agreement or to abolish City recycling jobs as provided for in the Agreement.

**NOW, THEREFORE**, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

(I)

**THAT**, the Utilities Board recommends approval to the City Council of the Agreement Concerning a Regional Recycling Program and Regional Solid Waste Collection Services Provided by South Central Solid Waste Authority.

(II)

THAT, City staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED this 11<sup>th</sup> day of June, 2009.

By Leann DeMouche  
Board Chair

ATTEST:

[Signature]  
Secretary

Moved by DeMouche

Seconded by Little

VOTE:

Chair DeMouche:	<u>Aye</u>
Vice-Chair Cadena:	<u>Aye</u>
Commissioner Archuleta:	<u>Aye</u>
Commissioner Jones:	<u>Aye</u>
Commissioner Little:	<u>Aye</u>
Commissioner Moy:	<u>Aye</u>
Commissioner Ries:	<u>Aye</u>

APPROVED AS TO FORM:

[Signature]  
Utilities Attorney

**AGREEMENT CONCERNING A REGIONAL RECYCLING PROGRAM  
AND REGIONAL SOLID WASTE COLLECTION SERVICES  
PROVIDED BY SOUTH CENTRAL SOLID WASTE AUTHORITY**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the **South Central Solid Waste Authority** (“Authority”) and the **City of Las Cruces** (“City”) as follows:

**BACKGROUND**

1. In 1994 the City Council approved Resolution No. 95-176 which approved a Joint Powers Agreement (“1994 JPA”) between the City and the County of Doña Ana (“County”) to establish a permanent regional solid waste authority. The 1994 JPA limited the purpose of the Authority to only operating a regional solid waste landfill and related facilities such as the solid waste transfer station located at 2855 West Amador Avenue, west of the intersection of Motel Boulevard and Amador Avenue.

2. In 2009, the Third Amended and Restated Joint Powers Agreement (“2009 JPA”) was approved by the City and by the County. The 2009 JPA expanded the purpose and powers of the Authority to include offering and operating regional recycling and solid waste collection services for customers within the regional boundaries of the Authority, provided the necessary governing public bodies give their approval and consent.

3. The New Mexico Solid Waste Act, NMSA 1978, § 74-9-1 *et seq.*, and the New Mexico Solid Waste Authority Act, NMSA 1978, § 74-10-1 *et seq.*, are intended to be construed together and with the understanding that the provisions of the Solid Waste Authority Act are to be broadly construed to accomplish the legislative determination set forth in NMSA 1978, § 74-10-2 and allows the Authority to offer a regional recycling program inside and outside of the City limits and to further offer regional solid waste collection services outside of the City limits.

4. The Authority was created in accordance with the New Mexico Joint Powers Act, NMSA 1978, § 11-1-1 *et seq.*, as well as the aforementioned Solid Waste Act and Solid Waste Authority Act. Section 11-1-3 of the Joint Powers Act provides that two or more public agencies, such as the City and the County, may jointly create an entity with the authority to exercise any power common to them. Both the City and the County can provide refuse collection and disposal services. The City is so authorized by NMSA 1978, § 3-48-3 (2003) and the County is so authorized by NMSA 1978, § 4-56-1 (1967). Therefore, the Authority is permitted to exercise a power common to the City and the County as provided in the 2009 JPA and may directly or by contract offer refuse collection and disposal services to customers within the unincorporated portions of the County with the consent of the County Commission.

5. The parties seek to create a regional recycling program to be administered by the Authority and which shall provide recycling for residential, multi-family, commercial and institutional properties, along with various other community collection locations.

6. The parties further seek to authorize the Authority to offer solid waste collection services within the unincorporated portions of the County, and with the consent of the County Commission as set forth in this Agreement.

## **CONDITIONS**

### **I. REGIONAL SOLID WASTE COLLECTION SERVICES:**

#### **A. Authority Responsibilities**

1. The Authority will contract with the City for the City to provide solid waste collection services within the unincorporated portions of the County with the consent of the County Commission and subject to any service area limitations which may be established by the County Commission. The City will deliver the collected solid waste to the Authority who

will also market its residential and commercial solid waste collection services within the service area established by the County Commission.

2. Property owners within the County who voluntarily contract with the Authority for solid waste collection services will be solid waste customers of the Authority. The Authority will charge its County customers, who live within developments that abut the City limits, a rate equal to what the City charges its comparable solid waste customers. The Authority may charge its County customers, who live within developments that do not abut the City limits, a rate 1.35 times what the City charges its comparable solid waste customers or whatever rate that the Authority deems to be fair and reasonable in consultation with the City.

3. The Authority may charge its County customers a surcharge as approved by the Authority's Board of Directors reasonably necessary to offset increased administrative fees and collection.

**B. City Responsibilities**

1. The level of solid waste collection service provided to the Authority's County customers by the City will be comparable to the level of service provided to City customers as of the date of this Agreement including but not limited to the provision of roll-out containers and grappler services, and the frequency of pickups.

2. The City is the fiscal agent for the Authority and will continue to provide billing services to the Authority's solid waste customers within the County until such time as the City ceases to be the fiscal agent for the Authority. If the City ceases to be the fiscal agent for the Authority, the Authority may negotiate with the City to continue to provide billing services for solid waste collection to the Authority's customers. If the City chooses not to provide billing

services for such solid waste collection, the Authority will then provide its own billing services for its customers.

3. Should the City annex any area where the Authority provides contracted solid waste collection services through the City, those County customers will be transferred to become City solid waste customers.

## II. REGIONAL RECYCLING:

### A. Existing Recycling Programs

#### 1. City:

(a) The City operates a voluntary recycling program consisting of community collection containers for newspapers, metal and aluminum cans, and corrugated cardboard, which containers are located within the parking lot of various commercial establishments within the City limits.

(b) The City provides containers for corrugated cardboard and office paper to City commercial and institutional solid waste customers for a monthly fee.

(c) The City also collects recyclables at a City administered recycling center ("Recycling Center") located at 2855 West Amador Avenue adjacent to the City's Jacob Hands Wastewater Treatment Facility. The Recycling Center accepts newspapers, aluminum and metal cans, corrugated cardboard and brown paper bags, plastic No. 1 and No. 2 containers, computers, telephone books, office paper, household hazardous waste, tires with a small surcharge, and appliances and scrap metal.

(d) The City's existing recycling program employs a coordinator and ten (10) employees and owns the equipment described on Exhibit "A" and Exhibit "B" attached hereto.

2. **Authority:**

The Authority does not currently operate a recycling program.

B. **Commitments to Regional Recycling**

In order to implement an effective regional recycling program, the parties commit to the following:

1. **City Commitments:**

(a) Equipment to be Sold. The City will sell to the Authority the recycling equipment listed on Exhibit "A" for the total adjusted sum of \$404,735.00. Said sum will be deposited directly into the City's solid waste fund. The Authority will purchase the equipment from the City detailed on Exhibit "A" in its "as is" condition. The City will then provide the Authority with a collective bill of sale for all of the equipment listed on Exhibit "A" that does not have individual City inventory numbers. The Authority will also purchase the motor vehicles from the City detailed on Exhibit "A" in their "as is" condition. The City will then title the motor vehicles in the name of the Authority for all of the vehicular equipment listed on Exhibit "A" and, for those motor vehicles lacking titles, the City will provide the Authority with individual bills of sale.

(b) Equipment to be Leased. The City will lease at no cost to the Authority the recycling equipment itemized on Exhibit "B." The lease term will be perpetual unless terminated as provided for in this Agreement. This equipment was acquired by the City with grant monies and cannot be sold to the Authority due to limitations within the grant funding agreement.

(c) Recycling Center. The City authorizes the Authority to operate and maintain the City's Recycling Center in a safe condition and in compliance with all

applicable regulations for such a center, and to use the Recycling Center for any permissible Authority purpose. However, the City will not pay the Authority to maintain and operate the Recycling Center, nor will the Authority pay the City for use of the Center. In lieu of payment to the City for its use of the Center, the Authority will assume all of the operation and maintenance responsibilities for the Recycling Center, which responsibilities have previously been performed by the City.

(d) Financial Subsidy by the City. The City's solid waste residential service rate currently contains a \$3.09 per month charge for the City's existing recycling program. The City will dedicate the recycling component charge from all of the City's monthly residential solid waste customers, including the Authority's solid waste customers within the County, and for any other solid waste customer whose rates may hereafter include a recycling component charge to the Authority solely for the Authority's recycling program. Payments will be made monthly to the Authority no earlier than the first month after the Authority has completed its closed, non-competitive recruitment for the positions that it will need for its recycling program from among the City recycling employees whose positions are being abolished as provided hereafter in sub-paragraph (f) and after those selected employees have taken positions with the Authority. The City currently has approximately 21,609 residential (non-senior) solid waste customers so the estimated subsidy from the City for the Authority's recycling program for FY 10 will be approximately \$66,772.00 per month or \$801,262.00 per year based on \$3.09 per month per residential (non-senior) solid waste customers. The solid waste residential service rate for senior citizens does not currently include a recycling component charge. The City cannot guarantee what, if any, future financial subsidy will be made for the benefit of the Authority's recycling program because the recycling component charge is part of

the City's existing solid waste rate for residential (non-senior) customers. All of the City's solid waste rates will be reviewed as part of the rate filings to be made by the Utilities Department to the Utilities Board in 2009. The City's Utilities Board is empowered to set utility rates and it will be up to the Board to establish the amount, if any, allocated for recycling and for which classes of customers the recycling allocation would apply.

(e) City Commercial and Institutional Recycling Customers. The City will provide written notification to its commercial and institutional recycling customers, who pay the City a monthly fee for recycling container service, notifying them of a specific date that the City is transferring its recycling services offered to City commercial and institutional customers and notifying them that the Authority will offer recycling services at a rate to be established by the Authority's Board of Directors, or will contract out those recycling services pursuant to a request for proposal process.

(f) City Recycling Employees. The City's recycling employee positions will be terminated, and reasonable attempts will be made to reassign or transfer the recycling personnel designated for separation due to abolishment of their current positions as provided for in Section 909 of the City's Personnel Manual. The Authority will proceed with a closed, non-competitive recruitment for the positions that it will need for its recycling program from among the City recycling employees whose positions are being abolished.

(g) Composting Program. The City currently operates a composting program that is not part of this Agreement. For purposes of this Agreement, compost and green waste are not considered to be recyclable materials. The Authority shall not operate a composting program within the City limits during the term of this Agreement without the City's express written consent.

(h) Accounting for Recycling Program. For so long as the City is the fiscal agent for the Authority and for so long as the Authority receives a financial subsidy from the recycling component charge within any of the City solid waste rates, the City's annual financial report for the Authority will include a separate account or fund showing the receipts, expenditures and balance for the Authority's recycling program.

(i) Cost of Service Analysis. The cost of service analysis for the 2009 solid waste rate case to be filed by the Utilities Department with the Utilities Board will be provided by the City. It is proposed by the Utilities Department as part of its solid waste rate case to be filed with the Utilities Board in 2009 that the cost for recycling will be shown as a pass through recycling fee on City utility bills to its solid waste customers and to the Authority's solid waste customers within the County. For so long as the Authority desires to receive a financial subsidy from City solid waste rates for the Authority's recycling program, the Authority will prepare at its sole expense whatever cost of service analysis is required as part of future City solid waste rate case filings before the Utilities Board.

2. **Authority Commitments:**

(a) Recycling Program. The Authority will offer a recycling program within the City limits at least comparable to the City's existing recycling program as of the date of the Agreement or as may otherwise agreed to by the City and the Authority in recognition of changing recycling market conditions for the term of this Agreement.

(b) Accounting for Recycling Program. If the City ceases to be the fiscal agent for the Authority and the Authority receives a financial subsidy from the recycling component charge within any City solid waste rates, the Authority's annual financial report will

include a separate account or fund showing the receipts, expenditures and balance for the Authority's recycling program.

(c) Cost of Service Analysis. If the City ceases to be the fiscal agent for the Authority and the Authority desires to receive a financial subsidy from City solid waste rates, the Authority will prepare at its sole expense whatever cost of service analysis is required as part of future City solid waste rate filings before the Utilities Board.

(d) Leased Equipment. The Authority will use the leased equipment listed on Exhibit "B" solely for the collection and processing of recyclable materials related to the Authority's recycling program; will maintain the leased equipment in a good state of repair, normal wear and tear excepted; will insure the leased equipment under its personal property insurance policy and insure against theft or destruction on a replacement costs basis; and will not sublease or assign its interest in any of the leased equipment to any third party without the City's express written consent. The Authority will return to the City any of the leased equipment that becomes obsolete, worn-out or unusable for the City to dispose of in compliance with any grant funding restrictions and in compliance with NMSA Section 3-54-2 as amended.

(e) Limitations on Use. The Authority will use the Recycling Center solely for the collection and processing of recyclable materials and for the maintenance of equipment related to any permissible Authority purpose, and in compliance with other restrictions set forth herein.

3. **Recycling Center:**

(a) Condition of Center. The City states that the Center is suitable for its intended purpose as a facility to collect and process recyclable materials, and that the City has disclosed to the Authority any reason that the City knows or reasonably should know that the

Center might not be suitable for such purposes. The Authority states that it has inspected the Center and has independently confirmed that the Center is suitable for the collection and processing of recyclable materials.

(b) Operation and Maintenance of Center. The Authority will be responsible for maintaining the Center in a safe operating condition. If the Authority fails to maintain the Center in a safe operating condition and the City is made aware of such unsafe operating condition, the City may terminate the Agreement if the Authority fails to remedy such unsafe condition within thirty (30) days of written notice from the City to do so. Safe operating conditions means operating and maintaining the Center in compliance with all applicable federal, state and local regulations. However, it is specifically agreed that the City is not obligated to monitor the Authority's operation and maintenance of the Center for compliance with any applicable regulations.

(c) Alterations. The Authority will obtain the City's written permission before making any alterations or improvements to the Center of a permanent nature. Such alterations or improvements shall be made in compliance with applicable state and local codes.

(d) Ownership of Improvements. All alterations and improvements made to or placed in the Center by the Authority are and will remain the Authority's property except as the parties may mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the Center and are, in fact, removed by the Authority prior to termination of this Agreement or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature that

cannot be removed without undue damage to the Center shall immediately become the City's property except as the parties may mutually agree otherwise in writing.

(e) Condition of Center Upon Surrender. At the termination of this Agreement, the Authority will surrender the Center in the condition in which it was at the inception of this Agreement excepting deterioration caused by reasonable use and ordinary wear and tear, or alterations or improvements made with the City's express written approval.

(f) Right of Entry. The City or its agent has a right to enter the Center to inspect to insure that the Authority is operating and maintaining the Center in a safe operating condition, however under no circumstances is the City obligated or required to inspect the Center.

### **III. LIABILITY:**

A. Neither party will be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

B. Each party will be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to this Agreement.

### **IV. COMMERCIAL GENERAL LIABILITY INSURANCE:**

During the term of this Agreement, the Authority will procure and maintain commercial general liability insurance in an amount of not less than the limits of the New Mexico Tort Claims Act as amended with the City named as an additional insured with the same coverage as the Authority to cover any claim for personal injury or property damage including attorney fees

and costs which may arise out of the Authority's use of the Recycling Center and of the leased equipment listed in Exhibit "B" hereto. The Authority will not commence to use the Recycling Center or the leased equipment under this Agreement until it has provided the City with proof of the insurance required herein and such insurance has been approved by the City.

**V. TERM AND TERMINATION:**

The term of this Agreement is perpetual but the Agreement may be terminated by either party without cause on twelve (12) months written notice to the other party and may be terminated by the City with cause as provided for in Section II (B) (3) (b).

**VI. AMENDMENT:**

This Agreement shall not be altered, changed, or amended except in a writing signed by the parties.

**VII. ENTIRE AGREEMENT:**

This Agreement incorporates all the agreements, covenants, and understanding between the parties and all such covenants, promises, and agreements have been merged into this Agreement. No prior agreement, covenant or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement or upon appropriate written amendment to this Agreement.

**VIII. DISPUTE RESOLUTION:**

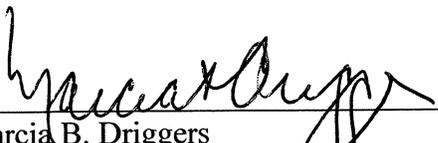
Should a dispute arise between the parties regarding this Agreement, the parties shall first attempt to resolve their dispute by mediation. Should mediation be unsuccessful, the dispute shall be settled by binding arbitration. The parties shall agree to a mutually acceptable arbitrator who shall render a final, binding decision upon the parties. The prevailing party, as determined

by the arbitrator, shall be entitled to payment of reasonable attorney's fees, costs and expenses in addition to any other award conferred at the arbitration.

**CITY OF LAS CRUCES**

By: \_\_\_\_\_  
Terrence A. Moore, City Manager

**APPROVED BY:**

  
\_\_\_\_\_  
Marcia B. Driggers  
Senior Assistant City Attorney

**SOUTH CENTRAL SOLID WASTE  
AUTHORITY**

By: \_\_\_\_\_  
Miguel Silva, Chairman

**APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY**

\_\_\_\_\_  
Jerome O'Connell  
Attorney for South Central Solid Waste Authority

RECYCLING EQUIPMENT VALUE SPREADSHEET- 5/09						
Inventory #	Description	Quantity	Book Value		Fleet Estimate	Adjustment
22490	98 S-10 Pickup	1	\$0.00		\$1,725.00	
25701	99 Ford PU w/ Tommy lift	1	\$0.00		\$1,975.00	
23897	Compactor - Plastic	1	\$0.00		\$4,785.00	
28426	04 Autocar/Mammoth Front Loader	1			\$90,000.00	
27167	02 International Roll off	1	\$9,380.92		\$80,000.00	\$40,000.00
20775	91 Case Backhoe 4X4	1	\$0.00		\$14,000.00	\$4,000.00
30961	06 Cat Forklift	1	\$19,886.47		\$18,000.00	
31251	08 Bobcat w attachments	1	\$29,000.00		\$25,000.00	-\$1,000.00
28121	Recycle Trailer	1	\$350.00		\$950.00	
	<b>SUB TOTAL</b>		<b>\$58,617.39</b>		<b>\$236,435.00</b>	
			<b>New Cost</b>	<b>50%</b>	<b>Total Value</b>	
none	Recycling Dumpsters 4 or 5 yd	48 + 15	?	\$400.00	\$25,200.00	
none	Recycling Dumpsters 6 yd	160 + 24	\$1,195.00	\$597.50	\$109,940.00	
none	Recycling Dumpsters 8 yd	3	?	\$450.00	\$1,350.00	
none	Recycle Tub Roll off w/Gondola	12 + 3	\$7,000.00	\$3,500.00	\$52,500.00	
none	Recycling Open Top Containers	8	\$4,000.00	\$2,000.00	\$16,000.00	
none	Tip Containers	12	\$400.00	\$200.00	\$2,400.00	
none	Paint Sprayer	1	\$2,150.00	\$1,075.00	\$1,075.00	
none	32 Gallon containers	189	\$30.00	\$15.00	\$2,835.00	
none	Hazardous Storage Container	1		\$0.00	\$0.00	
none	Oil Tanks	2		\$0.00	\$0.00	
none	Bulb Crusher - Foulescent/CFL	1		\$0.00	\$0.00	
	<b>SUB TOTAL</b>				<b>\$211,300.00</b>	
	<b>TOTAL</b>				<b>\$447,735.00</b>	<b>\$43,000.00</b>
	<b>TOTAL w ADJUSTMENT</b>				<b>\$404,735.00</b>	

# EXHIBIT A

