City of Las Cruces®
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Council Action and Executive Summary

Item # 12 Ordinance/Resolution# 2712

For Meeting of April 7, 2014 (Ordinance First Reading Date)

For Meeting of May 5, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $2,780,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF (1) REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING SOUTH CENTRAL SOLID WASTE AUTHORITY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX/PROJECT REVENUE REFUNDING BONDS, SERIES 2004, AND (2) ACQUIRING, CONSTRUCTING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING OR MAINTAINING SOLID WASTE DISPOSAL EQUIPMENT, EQUIPMENT FOR OPERATION AND MAINTENANCE OF SANITARY LANDFILLS, SANITARY LANDFILLS, SOLID WASTE FACILITIES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES FROM THE OPERATION OF THE SOUTH CENTRAL SOLID WASTE AUTHORITY SOLID WASTE FACILITIES AND GOVERNMENTAL UNIT AND DONA ANA COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX REVENUES; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE LOAN 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.

PURPOSE(S) OF ACTION:

Borrow money.

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

(Continue on additional sheets as required)

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces, in its capacity as the fiscal agent of the South Central Solid Waste Authority (SCSWA) and as the administering agency for issuance of revenue bonds under the Joint Powers Agreement, is proposing to submit an application for financial assistance to the New Mexico Finance Authority to allow the SCSWA to refinance its current debt and borrow an additional $1,600,000 for new operational infrastructure. Additionally, this financing proposal will allow the SCSWA to reduce its current annual debt service, which will result in the accumulation of needed capital in anticipation of constructing a large transfer station in Anthony, NM within two years of the completion of the land transfer from the Bureau of Land Management.

SUPPORT INFORMATION:

1. Ordinance.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

This transaction will not impact the FY 2014 budget. The City of Las Cruces and Doña Ana County will pledge their Environmental Gross Receipts Tax revenue to the proposed financing, but staff anticipates that the debt will be paid entirely from the SCSWA revenues beginning in FY 2015.

FUND EXPENDITURE SUMMARY:

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

(Continue on additional sheets as required)

COUNCIL BILL NO. 14-027
ORDINANCE NO. 2712

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $2,780,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF (1) REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING SOUTH CENTRAL SOLID WASTE AUTHORITY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX/PROJECT REVENUE REFUNDING BONDS, SERIES 2004, AND (2) ACQUIRING, CONSTRUCTING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING OR MAINTAINING SOLID WASTE DISPOSAL EQUIPMENT, EQUIPMENT FOR OPERATION AND MAINTENANCE OF SANITARY LANDFILLS, SANITARY LANDFILLS, SOLID WASTE FACILITIES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES FROM THE OPERATION OF THE SOUTH CENTRAL SOLID WASTE AUTHORITY SOLID WASTE FACILITIES AND GOVERNMENTAL UNIT AND DOÑA ANA COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX REVENUES; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE LOAN 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.

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

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

WHEREAS, pursuant to a joint powers agreement duly authorized and executed by the Governmental Unit and Doña Ana County, New Mexico (the "County") prior to the adoption hereof and designated as the "Third Amended and Restated Joint Powers Agreement to Establish a Regional Solid Waste Authority and to Provide for Financing" (the "Joint Powers Agreement"), all pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978, the Governmental Unit and the County have determined to jointly exercise common powers relating to solid waste disposal, have created the South Central Solid Waste Authority (the "Authority") and have designated the Governmental Unit as the fiscal agent and the administering agency for issuance of revenue bonds under the Joint Powers Agreement; and

WHEREAS, the County and the Authority will each consider for adoption, prior to execution and delivery of the Loan Agreement, its own ordinance establishing the need for the Project and pledging the Net Revenues of the System and, with respect to the County, its respective distribution of Environmental Services Gross Receipts Tax Revenues received from the New Mexico Department of Taxation and Revenue to the repayment of amounts due on the Loan Agreement; and

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

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

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, 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 Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit, the County, the Authority or the State; and

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

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

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

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

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

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 the Governmental Unit's Charter, Sections, 3-31-1 through 3-31-12, Sections 4-62-1 through 4-62-10, Sections 6-21-1 through 6-21-31 and Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and enactments of the

Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

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

"Authority" means the South Central Solid Waste Authority, a joint powers entity formed by the Governmental Unit and the County to exercise common powers relating to solid waste disposal, pursuant to the "Third Amended and Restated Joint Powers Agreement to Establish a Regional Solid Waste Authority and to Provide for Financing," all pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978.

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

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

"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.

"County" means Doña Ana County, New Mexico.

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

"Environmental Services Gross Receipts Tax Revenues" means the revenues derived from the (i) the imposition of municipal environmental services gross receipts tax by the Governmental Unit pursuant to Ordinance No. 1394, as authorized by Section 7-19D-10, NMSA 1978, and (ii) the imposition of county environmental services gross receipts tax by the County pursuant to Ordinance No. 78-90, as authorized by Section 7-20E-17, NMSA 1978.

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

"Finance Authority" means the New Mexico Finance Authority.

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

"Finance Authority Loan Agreement Reserve Account" means the loan agreement reserve account in the name of the Governmental Unit established under the Indenture, funded from the proceeds of the Loan Agreement or by the Governmental Unit, and administered by the Trustee pursuant to the Indenture.

"Finance Authority Loan Agreement Reserve Requirement" means the amount shown as the Loan Agreement Reserve Account Deposit on the Term Sheet attached as Exhibit "A" to the Loan Agreement, which amount shall not to exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) 125% of the average annual principal and interest requirements under the Loan Agreement, or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

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

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

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

"Improvement Project" means (i) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities, or any combination of the foregoing, (ii) funding the Finance Authority Loan Agreement Reserve Account, and (iii) paying all Expenses incidental to the issuance of the Bonds.

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

"Intercept Agreement" means the Intercept Agreement dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment by the Governmental Unit or the Distributing State Agency to the Finance Authority of Environmental Services Gross Receipts Tax Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Joint Powers Agreement" means that certain "Third Amended and Restated Joint Powers Agreement to Establish a Regional Solid Waste Authority and to Provide for Financing,"

duly authorized and executed by the Governmental Unit and County, pursuant to which the Governmental Unit and County have determined to jointly exercise common powers relating to solid waste, have created the Authority, and have designated the Governmental Unit as fiscal agent and as administering agency to issue revenue bonds on behalf of the Governmental Unit, the County and the Authority thereunder.

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

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

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

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

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

"Net Revenues of the System" means the gross revenues of the System less Operation and Maintenance Expenses.

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

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expense directly related and reasonably allocable to the administration of the System , insurance premiums, payments or deposits for any financial assurance reserve funds or bonds required by state or federal regulations, the reasonable charges of depositary banks and paying agents, contractual services (including but not limited to services of the Governmental Unit as fiscal agent and any contract operator of the System, including the Governmental Unit and the County), professional services required by this Ordinance, salaries and administrative expenses, labor, and the cost of materials and supplies used for current operation, but excluding any allowance for depreciation, liabilities incurred by the Authority or any contract operator (including the Governmental Unit and the County) as a result of their negligence in the operation of the System, extensions, enlargements or betterments or any charges for the accumulation of reserves for capital replacements.

"Ordinance" means this Ordinance No. _____ as adopted by the Governing Body on May 5, 2014, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

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

"Pledged Revenues" means the Net Revenues of the System and the Environmental Services Gross Receipts Tax Revenues.

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

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

"Project" means the Improvement Project, and the Refunding Project, as described in the Term Sheet.

"Refunding Project" means the refinancing, paying and discharging of the Refunded Bonds, including without limitation the payment of administrative and incidental costs pertaining to the execution and delivery of the Loan Agreement and to the payment and discharge of the Refunded Bonds.

"Refunded Bonds" means the South Central Solid Waste Authority Environmental Services Gross Receipts Tax/Project Revenue Bonds, Series 2004, maturing on and after June 1, 2015.

"State" means the State of New Mexico.

"System" means landfills and related facilities, including but not limited to transfer stations and all related facilities, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired through purchase, construction or otherwise, and used in connection with the System and owned and operated by the Authority directly or, as permitted by the Joint Powers Agreement, by contract operators.

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

"Trustee" means BOKF, NA dba Bank of Albuquerque, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

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

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

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

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

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

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

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

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

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

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

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

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount not to exceed $2,780,000, plus interest, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby

authorized. The Governmental Unit shall use the proceeds of the Loan to finance the Project and to pay the Processing Fee and Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an aggregate principal amount not to exceed $2,780,000, shall be payable in installments of principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on December 1, 2014 at the rates designated in Exhibit "B" to the Loan Agreement.

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

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

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

A. Program Account, Finance Authority Debt Service Account and Finance Authority Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the

Finance Authority and to the Program Account and Finance Authority Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; (ii) the deposit of funds in the amount of the Finance Authority Loan Agreement Reserve Requirement in the Finance Authority Loan Agreement Reserve Account as set forth in Exhibit "A" to the Loan Agreement; and (iii) the payment of the Processing Fee to the Finance Authority, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account and Finance Authority Loan Agreement Reserve Account, and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

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

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

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that the Project has been completed. As soon as practicable after the Completion Date, 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 Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the Finance Authority, or pursuant to the Intercept Agreement, the Environmental Services Gross Receipts Tax Revenues shall be redirected to the Finance Authority, for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments, including an amount sufficient to cure any deficiencies in the Finance Authority Loan Agreement Reserve Account to maintain the Finance Authority Loan Agreement Reserve Requirement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account and Finance Authority Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other

amounts due under, the Loan Agreement in which case moneys in such accounts in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

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

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

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 18 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 Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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 provided therein.

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. Redemption of the Refunded Bonds. The Governmental Unit hereby elects to optionally redeem the Refunded Bonds on June 20, 2014 in accordance with the provisions of the ordinance authorizing issuance of the Refunded Bonds. The redemption of the Refunded Bonds is expected to be contemporaneous with the execution and delivery of the Loan Agreement.

Section 17. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 18 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 18. 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)

Las Cruces, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. _____ duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico, on May 5, 2014. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

COUNCIL BILL NO. _____
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY,

EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $2,780,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF (1) REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING SOUTH CENTRAL SOLID WASTE AUTHORITY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX/PROJECT REVENUE REFUNDING BONDS, SERIES 2004, AND (2) ACQUIRING, CONSTRUCTING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING OR MAINTAINING SOLID WASTE DISPOSAL EQUIPMENT, EQUIPMENT FOR OPERATION AND MAINTENANCE OF SANITARY LANDFILLS, SANITARY LANDFILLS, SOLID WASTE FACILITIES, OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES FROM THE OPERATION OF THE SOUTH CENTRAL SOLID WASTE AUTHORITY SOLID WASTE FACILITIES AND GOVERNMENTAL UNIT AND DOÑA ANA COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX REVENUES; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE LOAN 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.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

DONE AND APPROVED this ____ day of _____, 2014.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by:_____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT "A"

Meeting Agenda
May 5, 2014
City Council Meeting

(See attached)

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

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

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the City of Las Cruces, New Mexico (the "Governing Body"), constituting the Governing Body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on May 5, 2014, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____, 2014.

_____
Esther Martinez-Carrillo, City Clerk

[SEAL]