

# City of Las Cruces®

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## Council Action and Executive Summary

Item # 11

Ordinance/Resolution# 15-007

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of July 7, 2014  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

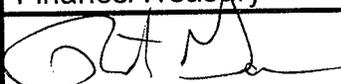
LEGISLATIVE

ADMINISTRATIVE

**TITLE: A RESOLUTION ADOPTING AND APPROVING CONTINUING DISCLOSURE COMPLIANCE PROCEDURES FOR BONDS AND LOANS OF THE CITY; OTHER MATTERS RELATING THERETO; AND RATIFYING ACTIONS PREVIOUSLY TAKEN IN CONNECTION THEREWITH.**

### PURPOSE(S) OF ACTION:

Adopt new post-issuance compliance procedures.

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

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Federal Securities laws related to the issuance of bonds and loans are requiring increased scrutiny of post-issuance activities related to disclosure of timely and accurate financial information of the issuer to include Official Statements, annual reports, notices of specified events, and other information that might be considered significant by a reasonable investor.

### SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A".

(Continue on additional sheets as required)

**SOURCE OF FUNDING:**

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

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY:**

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

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Resolution.
2. Vote "No"; this will reject the Resolution.
3. Vote to "Amend"; this could change the intent of the Resolution.
4. Vote to "Table"; this could delay the ultimate decision to Approve or Reject the Resolution.

**REFERENCE INFORMATION:**

N/A

**RESOLUTION NO. 15-007**

**A RESOLUTION ADOPTING AND APPROVING CONTINUING DISCLOSURE COMPLIANCE PROCEDURES FOR BONDS AND LOANS OF THE CITY; OTHER MATTERS RELATING THERETO; AND RATIFYING ACTIONS PREVIOUSLY TAKEN IN CONNECTION THEREWITH.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces, New Mexico (the "City") incurs debt in the form of bonds and loans from time to time for the purpose of financing public projects and to refinance debt previously issued by the City; and

**WHEREAS**, to ensure the City complies with the requirements of federal securities laws, including Rule 15c2-12 promulgated by the Securities and Exchange Commission, the City Council (the "Council") desires to adopt and implement post-issuance disclosure compliance procedures in the form attached hereto as Exhibit A (the "Continuing Disclosure Compliance Procedures").

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

Section 1. Adoption and Approval of Post-Issuance Compliance Procedures.

The Continuing Disclosure Compliance Procedures in the form attached hereto as Exhibit A are hereby adopted and approved. The Continuing Disclosure Compliance Procedures may be amended as deemed necessary by the Compliance Officer to comply with the Code.

Section 2. Appointment of Compliance Officer; Authority. The Council hereby designates the City Treasurer as the Compliance Officer for purposes of the Continuing Disclosure Compliance Procedures. The Compliance Officer is hereby authorized, empowered and directed to do all such acts and things and to execute all such

documents as may be necessary to carry out and comply with the provisions of this Resolution and the Continuing Disclosure Compliance Procedures, and is further authorized to take any and all further actions and execute and deliver any and all other certificates, papers and documents as may be necessary or desirable to effect the actions contemplated by this Resolution and the Continuing Disclosure Compliance Procedures.

Section 3. Effective Date. This Resolution shall be in full force and effect immediately upon adoption and approval by the Council.

(I)

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

**DONE AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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:

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City Attorney

**CITY OF LAS CRUCES, NEW MEXICO  
DISCLOSURE PROCEDURES  
FOR BONDS AND LOANS**

**A. Introduction**

These procedures have been adopted by the City of Las Cruces, New Mexico (the "Issuer") in order to comply with federal securities laws related to the Issuer's bonds and loans.

**B. Types of Disclosure Governed by These Procedures**

The Issuer will use these procedures in connection with the following forms of disclosure (collectively, "Disclosure Documents"):

1. Primary Disclosure.
  - i. Preliminary Official Statements
  - ii. Final Official Statements
  
2. Secondary Disclosure.
  - i. Continuing Disclosure
    - Examples: annual reports and notices of specified events provided pursuant to a continuing disclosure agreement.
  - ii. Voluntary Disclosure
    - Examples: quarterly financial information, a change in fiscal year and other additional financial or operation information; amendments to continuing disclosure undertakings; a change in obligated persons and other event-based disclosures.
  
3. Other Disclosure.
  - i. Information about that Issuer that is material and reasonably expected to reach investors. Information is material if there is a substantial likelihood that it would be considered significant by a reasonable investor.
    - Examples: financial information on the Issuer's website, such as the Issuer's budget and fiscal reports; public statements regarding the Issuer's finances that are made by representatives of the Issuer.
  - ii. Statements or omissions related to the tax status of the Issuer's obligations.
    - Examples: statements or omissions in tax certificates, loan agreements or other documents relied on by bond counsel.

### **C. Disclosure Training**

The Issuer shall retain bond counsel and/or disclosure counsel. The City Treasurer or employee assigned by the City Treasurer shall work with such counsel to create, implement and periodically revise ongoing disclosure training. Every person designated by the City Treasurer to assemble information or otherwise participate in the preparation of a disclosure document (a “Responsible Person”) shall receive disclosure training related to federal securities laws as well as training related to their role in preparing the Issuer’s Disclosure Documents.

### **D. Ongoing Disclosure Policies and Procedures**

The following are general, ongoing disclosure policies and procedures of the Issuer. With the assistance of bond counsel or disclosure counsel, the City Treasurer and City employee designated by the City Treasurer shall do the following:

1. Monitor Compliance on a Weekly Basis. In addition to the filing of annual reports, the Issuer must provide notice of events specified in the Issuer’s continuing disclosure undertakings. Generally, notice of such events must be provided to the Municipal Securities Rulemaking Board within ten business days after the occurrence of such event. In order to ensure compliance with the Issuer’s continuing disclosure undertakings, the City Treasurer or designee shall review the list of events specified in the Issuer’s continuing disclosure undertakings on a weekly basis to determine whether any such event has occurred that may require notice.
2. Verify Primary Disclosure at Key Times. The Issuer’s Preliminary and final Official Statement must not contain any untrue statement of material fact, or omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The City Treasurer or designee must verify the accuracy of its primary disclosure not only during drafting and review, but also at the time of (i) posting or mailing the Preliminary Official Statement, (ii) pricing of the Issuer’s bonds or loans, and (iii) at the time of closing of the transaction. If developments occur that may make the Issuer’s primary disclosure inaccurate or incomplete as described above, the City Treasurer or designee will work with the disclosure counsel and/or bond counsel to remedy these potential issues.
3. Promptly Address Issues and Questions. Everyone who participates in creating or reviewing a Disclosure Document should promptly address issues that arise throughout the disclosure process. The City Treasurer or designee and Responsible Parties must address and resolve all questions they may have regarding the accuracy and completeness of a Disclosure Document.
4. Consider What is Missing. Instead of simply updating numerical data from one year to another, Responsible Parties and the City Treasurer or designee must consider what is missing from Disclosure Documents. For example, material developments related to the Issuer’s financial condition may have occurred, cost projections for a project may have

changed or laws affecting the Issuer may have been enacted. Material developments such as these may not appear in prior Disclosure Documents and therefore cannot be adequately disclosed by simply updating prior Disclosure Documents.

5. Encourage Responsible Parties and Disclosure Team Members to Raise Issues. Responsible Parties, the City Treasurer or designee and any other participants have a duty to carefully consider and question the information in Disclosure Documents to ensure that the Issuer's disclosure is complete and accurate. Issues and questions regarding the completeness or accuracy of any Disclosure Document should first be raised internally. Such questions should be discussed with the City Treasurer or designee, bond counsel or disclosure counsel and others within the Issuer until resolved.

#### **E. Conclusion**

These procedures have been adopted by the Issuer. The City Treasurer or designee will review these procedures no less than annually and will periodically consult with bond counsel and/or disclosure counsel to ensure these procedures are effective in producing disclosure that is accurate, complete and in compliance with federal securities laws.