

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2008-18

APPROVING AND RATIFYING AN ORDINANCE OF THE SANTA FE SOLID WASTE MANAGEMENT AGENCY WHICH AUTHORIZES THE EXECUTION AND DELIVERY OF (1) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN THE AMOUNT OF \$2,000,000 AND (2) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO FINANCE AUTHORITY IN THE AMOUNT OF \$1,000,000, EACH FOR THE PURPOSE OF 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; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

Capitalized terms in this ordinance have the same definitions as set forth in the Loan Authorizing Ordinance (as defined in the following preambles), unless the context requires otherwise.

WHEREAS, the City of Santa Fe, New Mexico (the "City") is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico; and

WHEREAS, pursuant to a joint powers agreement duly authorized and executed by the City and the County of Santa Fe, New Mexico (the "County") (collectively, the

"Participants") prior to the adoption hereof and designated as the "First Amended Joint Powers Agreement" ("Joint Powers Agreement"), all pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978 and as approved by the New Mexico Department of Finance and Administration on November 18, 1996, the Participants have determined to jointly exercise common powers relating to solid waste disposal and have created the Santa Fe Solid Waste Management Agency (the "Agency"); and

WHEREAS, pursuant to the Joint Powers Agreement and Agency Ordinance No. 1996-1, as amended, adopted by the Agency on December 3, 1996 (the "Rate Ordinance"), the Agency established the fees, rates and charges for use of the Facility; and

WHEREAS, pursuant to the Joint Powers Agreement and Agency Ordinance No. 2008-1, adopted by the Agency on April 7, 2008 (the "Loan Authorizing Ordinance"), the Agency authorized the execution and delivery of (1) a loan agreement by and between the Agency and the New Mexico Environment Department in the principal amount of \$2,000,000 (the "NMED Loan Agreement") and (2) a loan agreement by and between the Agency and the New Mexico Finance Authority in the principal amount of \$1,000,000 (the "NMFA Loan Agreement"); and

WHEREAS, the proceeds of the loans evidenced by the NMED Loan Agreement and the NMFA Loan Agreement (together, the "Loan Agreements") are to be used for acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for the operation and maintenance of sanitary landfills, solid waste facilities or any combination of the foregoing; and

WHEREAS, the NMED Loan Agreement shall be executed and delivered pursuant to Section 11-1-7, NMSA, 1978, Sections 3-31-1 through 3-31-12, NMSA 1978, and Sections 4-62-1 through 4-62-10, NMSA 1978, and shall constitute an irrevocable and first lien, on parity with the lien of the NMFA Loan Agreement and with additional parity obligations, on the Pledged Revenues, as provided in the Loan Authorizing Ordinance; and

WHEREAS, the NMFA Loan Agreement shall be executed and delivered pursuant to Section 11-1-7, NMSA, 1978, Sections 3-31-1 through 3-31-12, NMSA 1978, and Sections 4-62-1 through 4-62-10, NMSA 1978, and shall constitute an irrevocable and first lien, on parity with the lien of the NMED Loan Agreement and with additional parity obligations, on the Pledged Revenues, as provided in the Loan Authorizing Ordinance; and

WHEREAS, there has been presented to the Council and there presently is on file with the City Clerk the Loan Authorizing Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO:

Section 1. Ratification. All action heretofore taken (not inconsistent with the express provisions of this ordinance) by the Council and officers of the City directed toward the Project and the Loan Authorizing Ordinance, be and the same hereby are ratified, approved and confirmed.

Section 2. Ratification and Approval of Loan Authorizing Ordinance. The adoption of the Loan Authorizing Ordinance by the Agency, in the form presented to the Council is hereby ratified, approved and confirmed. The details of the NMED Loan

Agreement and the NMFA Loan Agreement shall be substantially as set forth in the Loan Authorizing Ordinance and in the forms of the NMED Loan Agreement and NMFA Loan Agreement on file with the Agency. All payments of principal, interest, processing fees and otherwise pursuant to the NMED Loan and the NMFA Loan, shall be payable and collectable solely out of the Pledged Revenues ("Pledged Revenues"), which the Agency has irrevocably so pledged. The registered owner or owners thereof may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor; and the Loan Agreements shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City, the County, or the Agency; and the NMED Loan Agreement and NMFA Loan Agreement authorized to be executed and delivered shall each recite that it is payable and collectable solely from the Pledged Revenues, the income from which is so pledged, and that the registered owner thereof may not look to any general or other fund for the payment of principal of or interest due pursuant to either Loan Agreement. Nothing herein shall prevent the Agency from paying any of the principal of or interest due in connection with the NMED Loan Agreement or the NMFA Loan Agreement from any legally available funds, but the Agency is not obligated to do so.

Section 3. Withdrawal from Joint Powers Agreement. The City hereby acknowledges that the Joint Powers Agreement provides that neither the City nor the County may terminate the Joint Powers Agreement so long as any revenue bonds (including the NMED Loan Agreement and the NMFA Loan Agreement) issued under

the Joint Powers Agreement by the Agency are outstanding, i.e. so long as there has not been full payment or defeasance of such revenue bonds.

Section 4. Delegated Powers. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limiting the generality of the foregoing, compliance with the Joint Powers Agreement and any amendments thereto and execution of such certificates or agreements as reasonably may be required to effect the Project and the execution and delivery of the NMED Loan Agreement and the NMFA Loan Agreement.

Section 5. Severability. If any section, paragraph, clause or provision shall 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 6. Repealer Clause. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 7. Ordinance Irrepealable. After the Agency has executed and delivered the NMED Loan Agreement, the NMFA Loan Agreement, or both, this ordinance shall be and remain irrepealable until all payments of principal and interest thereon shall be fully paid, canceled and discharged as therein provided, or there has been defeasance as provided by the Loan Authorizing Ordinance.

Section 8. Effective Date. Prior to its adoption, this ordinance was published by title and general summary of the subject matter contained herein (in substantially the form set out in Section 9 below) in the *Santa Fe New Mexican*, which maintains an office

in and is of general circulation in the County, in accordance with the law. This ordinance, upon its final passage, shall be recorded in the book of ordinances of the City kept for that purpose and authenticated by the signatures of the Mayor and the City Clerk, and said ordinance shall be in full force and effect five days after the notice of adoption of the ordinance has been published in the newspaper.

Section 9. General Summary for Publication. The title and a general summary of the subject matter contained in this ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

CITY OF SANTA FE, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE NO. _____

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 City Council on April 9, 2008. A complete copy of such Ordinance is available for public inspection during the normal and regular business hours of the City Clerk in her office at 200 Lincoln Avenue, Santa Fe, New Mexico 87504.

The title of the Ordinance is as follows:

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2008-____

APPROVING AND RATIFYING AN ORDINANCE OF THE SANTA FE SOLID WASTE MANAGEMENT AGENCY WHICH AUTHORIZES THE EXECUTION AND DELIVERY OF (1) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN THE

AMOUNT OF \$2,000,000 AND (2) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO FINANCE AUTHORITY IN THE AMOUNT OF \$1,000,000, EACH FOR THE PURPOSE OF 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; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

A general summary of the subject matter of the Ordinance is contained in its title.

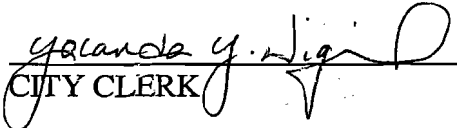
This Notice constitutes compliance with Section 6-14-6 NMSA 1978

PASSED, APPROVED and ADOPTED this 9th day of April, 2008.




DAVID COSS, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY