

STATE OF NEW MEXICO            )  
COUNTY OF GRANT                ) ss.  
TOWN OF SILVER CITY             )

The Town Council (the “Council”) of the Town of Silver City (the “Town”), in the State of New Mexico, met in open regular session in full conformity with law and the ordinances and rules of the Town, in the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Council, at 6:00 p.m., on Tuesday, April 12, 2016, at which time there were present and answering the roll call the following members:

Mayor:

Councilors:

Absent:

Thereupon the following proceedings, among others, were taken at such meeting:

There was officially filed with the Town Clerk, the Mayor and each Councilor, a copy of an ordinance in final form, which is as follows:

ORDINANCE NO. 1245

AUTHORIZING THE ISSUANCE OF THE TOWN OF SILVER CITY, NEW MEXICO MUNICIPAL GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2016 IN AN AGGREGATE PRINCIPAL AMOUNT OF \$800,000 FOR THE PURPOSE TO (1) FINANCE ACQUISITION OF EQUIPMENT FOR THE TOWN'S SOLID WASTE SYSTEM FOR THE BENEFIT OF THE TOWN AND ITS RESIDENTS, AND (2) PAY COSTS OF ISSUANCE OF THE SERIES 2016 BONDS; PROVIDING THAT THE SERIES 2016 BONDS WILL BE PAYABLE AND COLLECTIBLE FROM AND SECURED BY A PLEDGE OF THE 1/4<sup>th</sup> PERCENT MUNICIPAL GROSS RECEIPTS TAX DISTRIBUTED TO THE TOWN PURSUANT TO SECTION 7-19D-9 NMSA 1978, AS AMENDED, AND TOWN ORDINANCE NO. 1237; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM SAID TAX PROCEEDS; PROVIDING THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE METHOD OF PAYING SUCH AND THE SECURITY THEREFOR; PRESCRIBING OTHER DETAILS CONCERNING THE BONDS AND TAX PROCEEDS, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH AND THE FORM, TERMS, CONDITIONS AND MANNER OF EXECUTION OF THE BONDS; RATIFYING ALL ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; AND REPEALING ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the Town of Silver City, New Mexico (the "Town") 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 Section 7-19D-9 NMSA 1978, the Town has heretofore enacted Ordinance No. 1237, adopted and approved on March 24, 2015, which imposes an increment of municipal gross receipts tax at a rate of one-fourth of one percent (1/4 of 1%) of the gross receipts reported or required to be reported by persons engaging in business within the Town, with certain specified exemptions and deductions (such distributions to the Town as further defined in Section 1 being referred to herein as the "Municipal Gross Receipts Tax Revenues") which is being pledged to the Bonds herein authorized; and

WHEREAS, the Municipal Gross Receipts Tax Revenues are collected by the Revenue Division of the New Mexico Taxation and Revenue Department, and are remitted to the Town after deductions for administrative costs pursuant to Section 7-19D-7 NMSA 1978; and

WHEREAS, the Town has no outstanding obligations payable from the Municipal Gross Receipts Tax Revenues; and

WHEREAS, the Bonds shall be issued pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, and with an irrevocable first lien, but necessarily an exclusive first lien, on the Municipal Gross Receipts Tax Revenues; and

WHEREAS, after negotiation, the Council has determined and hereby determines that it is in the best interests of the Town and its citizens that the Bonds be sold at negotiated sale to

Western Bank at a purchase price of par (\$800,000) pursuant to the Bond Purchase Agreement dated April 12, 2016, between Western Bank and the Town ("Bond Purchase Agreement") and the Council hereby determines to sell, and hereby does sell such Bonds to Western Bank pursuant to the Bond Purchase Agreement which is hereby accepted; and

WHEREAS, the Town has determined that there is an urgent public need for the Project to be funded with proceeds of the Bonds; and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, the Council hereby determines that the Project is for a governmental purpose and is not a project which would cause the Bonds to be "private activity bonds" as defined by the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance and any ordinance or resolution amendatory hereof or supplemental hereto, or relating hereto:

“Acquisition Fund” has the meaning specified in Section 16.

“Authorized Officer” means the Mayor, Manager/Finance Director, Clerk or other officer or employee of the Town when designated by a Certificate signed by the Mayor of the Town from time to time.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized as bond counsel.

“Bond Fund” has the meaning specified in Section 16.

“Bond Interest is Taxable” means that interest paid or to be paid on the Bonds is or will be includable for federal income tax purposes in the gross income of the Purchaser or any other owner thereof, but excluding the inclusion of interest on such Bond as an item of tax preference for purposes of the calculation of an alternative minimum tax imposed on the Purchaser or such other owner.

“Bonds” means the “Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016”.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Council” means the governing body of the Town.

“Default Rate” means, for any date of determination, a fluctuating rate of interest per annum equal to the Prime Rate plus 3.17%.

“Event of Default” has the meaning assigned in Section 26.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the Town with respect to the issuance of the Bonds, including the fees, premiums, compensation, costs and expenses paid or to be paid to the Purchaser and attorneys' fees.

“Federal Securities” means direct obligations of, or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Fiscal Year” means the 12 months beginning on the first day of July of each calendar year and ending on the last day of June of the next calendar year, but it may mean any other 12-month period which any appropriate authority may hereafter establish for its Fiscal Year.

“Independent Accountant” means any registered or certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State appointed and paid by the Town who (i) is or are, in fact, independent and not under the domination of the Town, (ii) does not have any substantial interest, direct or indirect, with the Town, and (iii) is not connected with the Town as an officer or employee of the Town, but who may be regularly retained to make annual or similar audits of the books or records of the Town, and includes the New Mexico State Auditor.

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the State who is not a full time employee of the Town.

“Insured Bank” means a bank which is a member of the Federal Deposit Insurance Corporation.

“Interest Payment Date” means June 1 and December 1 in each year beginning December 1, 2016.

“Municipal Gross Receipts Tax Income Fund” has the meaning specified in Section 16.

“Municipal Gross Receipts Tax Revenues” means the amounts of money derived from the Town’s increment of Municipal Gross Receipts Tax which is imposed on all persons engaging in business in the Town pursuant to Town Ordinance No. 1237, adopted and approved on March 24, 2015, as authorized by Sections 7-19D-1 through 7-19D-9 NMSA 1978, (1) which tax equals, subject to the exemptions specified in 7-19D-7 NMSA 1978, one-fourth of one percent (1/4 of 1%) of the gross receipts reported or required to be reported by persons engaging in business in the Town, (2) which amounts are dedicated, in part, to acquiring, constructing, purchasing, furnishing, equipping, rehabilitating, beautifying, making additions to or making improvements to capital projects in the Town, and (3) which amounts are collected and, after deductions for administrative costs and any disbursements for tax credits, refunds and the payment of interest applicable to such Municipal Gross Receipts Tax and subject to any increase or decrease pursuant to Section 7-1-6.15 NMSA 1978, are distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the Town pursuant to Sections 7-1-6.12 and 7-19D-9 NMSA 1978. Municipal Gross Receipts Tax Revenues also includes (i) the portion of the gross receipts tax distribution to the Town to be made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of Municipal Gross Receipts Tax Revenues set forth in the sentence above that would have been remitted to the Town but for the deductions provided in Sections 7-9-92 and 7-9-93 NMSA 1978, and (ii) any similar distributions made to the Town in lieu of Municipal Gross Receipts Tax Revenues.

“Outstanding” when used with reference to the Bonds and as of any particular date, means all Bonds theretofore executed by the Town and authenticated by the Registrar except: (i) any Bonds cancelled or fully paid on or before such date; (ii) any Bond in lieu of on in substitution for which another Bond has been delivered pursuant to this Ordinance; (iii) any Bond for the payment or redemption of which funds or securities permitted by Section 24 in the necessary amount have theretofore been deposited with the Paying Agent (whether upon or prior to the maturity or redemption date of such Bond); and (iv) for the sole purpose of determining the percentage of Owners consenting to any amendment to this Ordinance or authorizing the exercise of any remedy hereunder, any Bonds owned by the Town. For all other purposes, Bonds owned by the Town which are not described in clauses (i), (ii) or (iii) shall be treated as Outstanding.

“Owner” means the registered owner of any Bond.

“Parity Obligations” means obligations payable from Municipal Gross Receipts Tax Revenues hereafter issued with a lien on the Municipal Gross Receipts Tax Revenues on parity with the Bonds.

“Paying Agent” means the Manager/Finance Director (or successor in function) of the Town, as agent for the Town for the payment of the principal of and interest and premium, if any, on the Bonds.

“Payment Date” means any date upon which any payment of principal of or interest on any Bond is scheduled to be made.

“Permitted Investments” means securities which are at the time legal investments of the Town for the money to be invested, as applicable, including but not limited to

the following if permitted by law: (i) direct obligations of, or obligations fully guaranteed by the United States of America or instruments evidencing ownership interests in those obligations or in specified portions of the principal of or interest on those obligations; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Rating Group; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1 NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

“Pledged Revenues” means the Municipal Gross Receipts Tax Revenues.

“Prime Rate” means, for any date of determination, the rate of interest per annum most recently established by The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported). Each change in the Prime Rate shall be effective without notice as of the opening of business on the day such change in the prime rate occurs.

“Project” means acquiring, purchasing, furnishing, equipping, or rehabilitating equipment for the Town’s Solid Waste System.

“Purchaser” means Western Bank.

“Registrar” means the Town’s Manager/Finance Director (or successor in function) of the Town, as registrar and transfer agent for the Bonds.

“Regular Record Date” means the 15th day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds.

“Series Date” means the date of original issuance of each series of Bonds.

“Special Record Date” means a special date fixed to determine the names and addresses of registered owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest thereon, all as further provided in Section 6(b).

“State” means the State of New Mexico.

“Taxable Rate” means, for any date of determination, the rate of interest per annum equal to the product of the interest rate on the Bonds then in effect multiplied by 1.668.

“Town” means the municipal body corporate and politic known as the Town of Silver City, New Mexico.

Section 2. Ratification. All action heretofore taken (not inconsistent with the express provisions of this Ordinance) by the Council and officers of the Town directed toward the Project, and toward the authorization, sale and issuance of the Bonds is ratified, approved and confirmed.

Section 3. Authorization of Project. The Project and the method of financing the Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds. The Project is found and declared to be necessary.

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

A. Moneys available for the Project from all sources other than the issuance of revenue bonds are not sufficient to defray the cost of the Project.

B. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

C. It is economically feasible to defray, in part, the cost of the Project by the issuance of the Bonds.

D. The issuance of the Bonds pursuant to the Act, to provide funds for the financing of the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the Town.

E. The net effective interest rate on the Bonds of 2.1746% is less than 12% per annum, the maximum rate permitted by State law.

F. The Bonds shall be sold to the Purchaser at the purchase price of par (\$800,000) pursuant to the Bond Purchase Agreement and is hereby accepted by the Council.

G. The Project is needed to meet the needs of the Town and its residents.

Section 5. Authorization of the Project and the Bonds.

A. Authorization of Project. The Project is hereby authorized at a total cost of \$800,000 excluding any such cost defrayed or to be defrayed by any source other than the Bonds. The Project is hereby declared to be necessary for the health, safety and welfare of the citizens of the Town.

B. Authorization of Bonds. This Bond Ordinance has been adopted by the affirmative vote of at least a three-fourth's (3/4<sup>ths</sup>) majority of all of the members of the Council. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Town, it is hereby declared necessary that the Town, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated "Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016," in an aggregate principal amount of \$800,000. The issuance, sale and delivery of the Bonds are hereby authorized. The Project is authorized and approved. The Bonds shall be sold to the Purchaser pursuant to the Bond Purchase Agreement at a purchase price of \$800,000.

Section 6. Bond Details.

A. Basic Details. The Bonds shall be dated the date of its issuance and delivery to the Purchaser, shall be issued as a single bond in an aggregate principal amount of \$800,000, and shall be numbered R-1. The Bond shall bear interest, calculated on an actual number of days/360 basis, from its date of delivery, payable semi-annually on June 1 and December 1 each year, commencing on December 1, 2016, until its maturity. The Bond shall mature on June 1, 2023 and is subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest to the redemption date. As and for a sinking fund for the redemption of the Bond, the Council shall cause to be deposited into the Bond Fund a sum which is sufficient to redeem on June 1 of each of the following years the following principal amounts of the Bond, plus accrued interest to the redemption date:

<u>Payment Date (June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2017	\$105,000	2.1746%
2018	110,000	2.1746%
2019	110,000	2.1746%
2020	115,000	2.1746%
2021	115,000	2.1746%
2022	120,000	2.1746%
2023	125,000	2.1746%

B. Payment. The principal of and any prior redemption premium applicable to any Bond shall be payable to the Owner thereof as shown on the registration books kept by the Registrar (which is appointed as registrar and transfer agent for the Bonds), upon maturity or prior redemption thereof and upon presentation and surrender at office of the Paying Agent (which is appointed as paying agent for the Bonds). If any Bond shall not be paid upon such presentation and surrender at or after maturity or on a designated prior redemption date on which the Town may have exercised its right to prior redeem any Bond pursuant to Section 7, it shall continue to draw interest at the rate borne by the Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the registered owner thereof as of the Regular Record Date by check or draft mailed by the Paying Agent, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day without accruing any additional interest), to the Owner thereof on the Regular Record Date at such Owner's address as it last appears on the registration books kept by the Registrar on the Regular Record Date (or by such other arrangement as may be mutually agreed to by the Paying Agent and any registered owner on such Regular Record Date). All such payments shall be made in lawful money of the United States of America. The person in whose name any Bond is registered at the close of business on any Regular Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Regular Record Date and prior to such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person

in whose name any Bond is registered at the close of business on a Special Record Date fixed by the Paying Agent for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Paying Agent whenever moneys become available for defaulted interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the Owners of the Bonds as of a date selected by the Paying Agent, stating the Special Record Date and the date fixed for the payment of such defaulted interest.

Section 7. Prior Redemption.

A. Redemption. The Bonds are subject to prior redemption at the option of the Town in one or more units of principal of \$5,000, in whole or in part at any time in such order of maturities as the Town may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as it shall consider appropriate and fair), for the principal amount of each \$5,000 unit so redeemed at 100% of par, accrued interest thereon to the redemption date.

B. Notice by Town. Unless waived by the Registrar, at least 45 days prior to any date selected by the Town for prior redemption of any of the Bonds, the Town shall give written instructions to the Registrar (and, if the Registrar is not also the Paying Agent, to the Paying Agent) with respect to such prior redemption.

C. Notice by Registrar. Additionally, notice of redemption shall be given by the Registrar by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each Owner as shown on the registration books kept by the Registrar as of the date of selection of units of principal for redemption. The Registrar shall not be required to give notice of any prior redemption unless it has received written instructions from the Town in regard thereof, at least 45 days prior to such redemption date or unless the 45 day deadline is waived by the Registrar. Failure to give such notice by mailing to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any of the Bonds for which proper notice was given.

D. Conditional Redemption. If money or Federal Securities sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph (c) of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the Town and the Registrar shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

E. Other Redemption Details. The notice required by Section 7(C) shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed (if less than all are to be redeemed); and all notices required by this Section 7 shall specify the date fixed for redemption, and shall further state that on such redemption date there shall become and be due and payable upon each \$5,000 unit of principal so to be redeemed at the office of the Paying Agent the principal thereof and the applicable prior redemption premium thereon (if any), and that from and after such date interest shall cease to accrue. Accrued interest to the redemption shall be paid by check or draft mailed to the Owner (or by alternative means if so agreed to by the Paying Agent and the Owner). Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation thereof at the office of the Paying Agent, the Town shall pay the Bond or Bonds so called for redemption and the applicable prior redemption premium (if any). In the event that only a portion of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the Owner pursuant to Section 10 and without charge to the Owner thereof.

Section 8. Negotiability. Subject to the provisions specifically made or implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable paper, and the Owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 9. Execution.

A. Method of Execution. Each Bond shall be executed by the manual or facsimile signature of the Mayor under the seal of the Town, each Bond shall be executed and attested with the manual or facsimile signature of the Town Clerk, and each Bond shall be authenticated by the manual signature of an authorized officer of the Registrar as hereafter provided. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the Town (subject to the requirement of authentication by the Registrar) notwithstanding that before the delivery thereof and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have to ceased to fill their respective offices.

B. Certificate of Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 10. Registration, Transfer, Exchange, Replacement and Cancellation.

A. Registration Books; Transfer and Exchange. Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the office of the Registrar, duly endorsed for transfer or accompanied by an assignment

duly executed by the Owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at office of the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds that the Owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the Owner or any transferee, but the Registrar may require the payment by the Owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

B. When Transfer or Exchange Not Required. The Registrar shall not be required: (i) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period of 15 days next preceding the mailing of notice to the Owners calling any Bonds for prior redemption pursuant to Section 7; or (ii) to transfer or exchange all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or portion thereof for prior redemption.

C. Payment to Registered Owners. The person in whose name any Bond shall be registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest as is provided in Section 6(B), and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the Owner thereof or the Owner's legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Replacement Bonds. If any Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond has matured, the Paying Agent may pay such Bond in lieu of replacement.

E. Delivery of Bond Certificates to Registrar. The officers of the Town are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

F. Cancellation of Bonds. Whenever any Bond is surrendered to the Paying Agent or Registrar upon payment thereof, or for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or the Registrar, as the case may be, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or the Registrar, as the case may be, to the Town.

Section 11. Special Obligations. All of the Bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the Pledged Revenues, which are 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 Bonds 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 Town; and each of the Bonds shall recite that it is payable and collectible solely from the Pledged Revenues, which are so pledged, and that the Owner thereof may not look to any general or other fund for the payment of principal and interest on, and prior redemption premium due in connection with, the Bonds.

Section 12. Forms of Bonds, Certificate of Authentication and Assignment. The Bonds and the related Certificate of Authentication and Form of Assignment shall be in substantially the following forms:

(Form of Bond)

UNITED STATES OF AMERICA  
 STATE OF NEW MEXICO  
 TOWN OF SILVER CITY

No. R-1

\$800,000

MUNICIPAL GROSS RECEIPTS TAX  
 IMPROVEMENT REVENUE BONDS  
 SERIES 2016

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Series Date</u>
2.1746% per annum	June 1, 2023	May __, 2016

REGISTERED OWNER: WESTERN BANK

PRINCIPAL AMOUNT: EIGHT HUNDRED THOUSAND DOLLARS

The Town of Silver City, New Mexico (the “Town”), for value received, promises to pay upon presentation and surrender of this bond, solely from the special funds provided therefor as hereinafter set forth, to the registered owner named above, or registered assigns, on the Maturity Date specified above (unless this bond, if subject to prior redemption, shall have been called for prior redemption in which case on such redemption date), upon the presentation and surrender hereof at the office of the Manager/Finance Director (or successor in function) of the Town (the “Paying Agent”), the Principal Amount stated above, in lawful money of the United States of America, and to pay to the registered owner hereof as of the Regular Record Date (being the 15th day of the calendar month preceding each regularly scheduled interest payment date as defined in Ordinance No. 1245, adopted on April 12, 2016 (which authorizes this bond and which is referred to herein as the “Bond Ordinance”), by check or draft mailed to such registered owner,

on or before each interest payment date as hereinafter provided (or, if such interest payment date is not a business day, on or before the next succeeding business day without accruing any additional interest), at his address as it last appears on the Regular Record Date on the registration books kept for that purpose by the Manager/Finance Director (or successor in function) of the Town as registrar for the bonds (the "Registrar") or by such other arrangement as may be agreed to by the Paying Agent and the registered owner hereof, interest on said sum in lawful money of the United States of America from the Series Date specified above or the most recent interest payment date to which interest has been fully paid or duly provided for in full (as more fully provided in the Bond Ordinance) until maturity at the per annum Interest Rate specified above calculated on an actual number of days/360 basis, payable on December 1, 2016 and semiannually thereafter on June 1 and December 1 in each year. Any such interest not so timely paid or duly provided for shall cease to be payable to the registered owner as of the Regular Record Date and shall be payable to the registered owner as of a Special Record Date (as defined in the Bond Ordinance), as further provided in the Bond Ordinance. If upon presentation and surrender to the Paying Agent at or after maturity or on a designated prior redemption date on which the Town may have exercised its right to prior redeem this bond pursuant to the Bond Ordinance, payment of this bond is not made as herein provided, interest hereon shall continue at the rate herein designated until the principal hereof is paid in full.

The Bonds are subject to prior redemption at the option of the Town in one or more units of principal of \$5,000, in whole or in part at any time in such order of maturities as the Town may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as it shall consider appropriate and fair), for the principal amount of each \$5,000 unit so redeemed at 100% of par, accrued interest thereon to the redemption date. Redemption shall be made upon prior notice mailed to each registered owner of each bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

The Bonds are fully registered (i.e., registered as to payment of both principal and interest), and are issuable in the denomination of \$5,000 or any denomination which is an integral multiple of \$5,000 (provided that no bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual bond shall be issued for more than one maturity).

This Bond shall mature on June 1, 2023 and is subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest to the redemption date. As and for a sinking fund for the redemption of this Bond, the Board shall cause to be deposited into the Bond Fund a sum which is sufficient to redeem on June 1 of each of the following years the following principal amounts of this Bond, plus accrued interest to the redemption date:

Payment Date (June 1)	Principal Amount	Interest Rate
2017	\$105,000	2.1746%
2018	110,000	2.1746%
2019	110,000	2.1746%
2020	115,000	2.1746%
2021	115,000	2.1746%
2022	120,000	2.1746%
2023	125,000	2.1746%

This bond is fully transferable by the registered owner hereof in person or by his duly authorized attorney on the registration books kept by the Registrar upon surrender of this bond together with a duly executed written instrument of transfer satisfactory to the Registrar. Upon such transfer a new fully registered bond of authorized denomination or denominations of the same aggregate principal amount and maturity shall be issued to the transferee in exchange for this bond, subject to such terms and conditions as set forth in the Bond Ordinance. The Town, the Paying Agent and the Registrar may deem and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of making payment and for all other purposes.

This bond is one of a series of bonds designated “Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016” of like tenor and date, except as to interest rate, number and maturity, authorized for the purpose to (1) finance acquiring, purchasing, furnishing, equipping, or rehabilitating equipment for the Town’s Solid Waste System for the benefit of the Town and its residents, and (2) pay costs of issuance of the Bonds.

This bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of New Mexico.

This bond does not constitute indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the Town, and is payable and collectible solely from the Pledged Revenues. The “Pledged Revenues” are the revenues from the Town’s one-fourth of one percent (1/4 of 1%) Municipal Gross Receipts Tax which is imposed on all persons engaging in business within the Town pursuant to Town Ordinance No. 1237, adopted and approved on March 24, 2015, and as authorized by Sections 7-19D-1 through 7-19D-9 NMSA 1978; and provided further, the Town intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance.

The bonds are equitably and ratably secured by a lien on the Pledged Revenues; and the bonds constitute an irrevocable and first lien (but not necessarily an exclusively first lien) upon the Pledged Revenues. Additional obligations may be issued and made payable from the Pledged Revenues and having a lien thereon inferior and junior to the lien, or, subject to designated conditions, having a lien thereon on a parity with the lien of the bonds of the series of which this bond is a part, in accordance with the provisions of the Bond Ordinance.

The Town covenants and agrees with the registered owner of this bond and with each and every person who may become the registered owner hereof that it shall keep and perform all of the covenants of the Bond Ordinance.

This bond is subject to the conditions, and every registered owner hereof by accepting the same agrees with the obligor and every subsequent registered owner hereof that the principal of and the interest on this bond shall be paid, and this bond is transferable, free from, and without regard to any equities between the obligor and the original or any intermediate registered owner hereof for any set-offs or cross-claims.

It is further certified, recited and warranted that all the requirements of law have been fully complied with by the Council and officers of the Town in the issue of this bond; and that it is issued pursuant to and in strict conformity with the Constitution and laws of the State of New Mexico, and particularly the terms and provisions of Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and all laws thereunto enabling and supplemental thereto.

This bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the certificate of authentication herein.

IN WITNESS WHEREOF, the Town of Silver City, New Mexico has caused this bond to be signed, subscribed, and executed, and attested with the manual or facsimile signatures of the Mayor and the Town Clerk, respectively; has caused its corporate seal to be affixed hereon, all as of the Series Date.

TOWN OF SILVER CITY, NEW MEXICO

By \_\_\_\_\_  
Ken Ladner, Mayor

(SEAL)

ATTEST

By \_\_\_\_\_  
Ann L. Mackie, Town Clerk

(Form of Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

Date of Authentication: \_\_\_\_\_

This is one of the bonds described in the within-mentioned Bond Ordinance, and this bond has been duly registered on the registration books kept by the undersigned as Registrar for such Bonds.

MANAGER/FINANCE DIRECTOR (OR  
SUCCESSOR IN FUNCTION) OF THE TOWN  
OF SILVER CITY, NEW MEXICO, as Registrar

By \_\_\_\_\_  
Authorized Officer

(End of Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT

For value received, \_\_\_\_\_ hereby sells, assigns and transfer unto \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Signature Guaranteed:

Name and Address of Transferee:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Social Security Number or  
Other Tax Identification Number: \_\_\_\_\_

(End of Form of Assignment)

(End of Form of Bond)

Section 13. Delivery of Bonds and Initial Registration. When the Bonds have been duly executed, authenticated, registered and sold, the Town shall deliver them to the Purchaser on receipt of the agreed purchase price.

Section 14. Disposition of Proceeds; Completion of Project. Except as otherwise specifically provided in this Ordinance, the proceeds derived from the sale of the Bonds shall be

used and paid solely for the purposes of the Project and including any costs relating to the issuance of the Bonds.

A. Accrued Interest. Upon the sale of the Bonds, all moneys received as accrued interest, if any, shall be deposited into the Bond Fund, to apply on the payment of interest next due on the Bonds.

B. Acquisition Fund. An amount necessary from the Bonds, together with other legally available funds of the Town, shall be deposited for the payment of the costs of the Project.

C. Expenses. An amount necessary, together with other legally available funds of the Town, shall be used to pay Expenses for the Bonds, from Bond proceeds.

D. Additional Deposit. Upon the issuance and sale of the Bonds, the Town Manager/Finance Director shall cause legally available moneys to be deposited in the Acquisition Fund in such amount as he determines shall be necessary to assure that the amount of the Acquisition Fund will be sufficient to pay the costs of the Project.

E. Use of Acquisition Fund. The Acquisition Fund shall be used to pay the costs of the Project when due. As soon as practicable after completion of the Project, and in any event not more than 60 days after completion of the Project, any balance remaining in the Acquisition Fund (other than any amount retained by the Town for any Project costs not then due and payable) shall be transferred from the Acquisition Fund and deposited in the Bond Fund and used by the Town to pay principal and interest on the Bonds as same become due.

Section 15. Purchaser Not Responsible. The validity of the Bonds is neither dependent on nor affected by the validity or regularity of any proceedings related to the completion of the Project. Neither the Purchaser nor any subsequent Owner of any Bonds shall in any manner be responsible for the application or disposal by the Town or by any officer or any employee or other agent of the Town of the moneys derived from the sale of the Bonds or of any other moneys designated in this Ordinance.

Section 16. Funds and Accounts. The Town hereby creates the following special and separate funds:

A. Acquisition Fund. The “Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016, Acquisition Fund” to be maintained by the Town.

B. Municipal Gross Receipts Tax Income Fund. The “Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016, Municipal Gross Receipts Tax Income Fund” to be maintained by the Town.

C. Bond Fund. The “Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016, Bond Fund” to be maintained by the Town.

Section 17. Deposit of Pledged Revenues and Flow of Funds.

A. Income Funds. So long as any of the Bonds are outstanding either as to principal or interest, or both, the Town shall credit all Pledged Revenues to the Municipal Gross Receipts Tax Income Fund, as applicable. The following payments shall be made from the Municipal Gross Receipts Tax Income Fund.

B. Bond Fund.

(i) As a first charge on the Municipal Gross Receipts Tax Income Fund, the following amounts shall be withdrawn from the Municipal Gross Receipts Tax Income Fund and shall be credited to the Bond Fund:

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth ( $1/6^{\text{th}}$ ) of the amount necessary to pay the next maturing installment of interest on the Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Bonds and monthly thereafter, commencing on each principal payment date, one twelfth ( $1/12^{\text{th}}$ ) of the amount necessary to pay the next maturing installment of principal on the Bonds then outstanding.

C. Credit. In making the deposits required to be made into the Bond Fund, if there are any amounts then on deposit in the Bond Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraphs (B) above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of Bond Fund. Each payment of principal and interest becoming due on the Bonds shall be transferred from the Bond Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. Payment of Parity Obligations. Concurrently with the payment of the Pledged Revenues required by paragraphs (B) of this Section, any amounts on deposit in the (1) Municipal Gross Receipts Tax Income Fund shall be used by the Town for the payment of principal of, interest on and debt service reserve fund deposits relating to Parity Obligations, payable from the Municipal Gross Receipts Tax Revenues, as the same accrue. If funds on deposit in the Municipal Gross Receipts Tax Income Fund are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Bonds and any other outstanding Parity Obligations, then the available and applicable funds in the Municipal Gross Receipts Tax Income Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity

Obligations and, second, to the extent of remaining available funds in the Municipal Gross Receipts Tax Income Fund, on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

F. Termination Upon Deposits to Maturity. No payment shall be made into the Bond Fund if the amount in such fund totals a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective maturities or applicable redemption dates, in which case moneys in the Bond Fund in an amount at least equal to such respective principal and interest requirements shall be used solely to pay such obligations as the same accrue, and any moneys in excess thereof in the Bond Fund may be used as provided below.

G. Defraying Delinquencies in Debt Service Fund. If, in any month the Town shall for any reason fail to pay into the Bond Fund the full amount above stipulated from the Pledged Revenues then an amount shall be paid into the Bond Fund equal to the difference between the amount paid from Pledged Revenues and the full amount so stipulated from the first revenues thereafter received from Pledged Revenues not required to be otherwise applied. The moneys in the Bond Fund shall be used solely and only for the purpose of paying the principal of and the interest on the Bonds issued hereunder; provided, however, that any moneys in the Bond Fund in excess of accrued and unaccrued principal and interest requirements to the maturities of the outstanding Bonds may be withdrawn and used for any lawful purpose.

H. Payment from Other Sources. Notwithstanding any other provisions of this Ordinance, the Town may, in its sole discretion, choose to apply other legally available funds to the payment of the Bonds.

I. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the Town may from time to time determine.

Section 18. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the Town from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the Town.

B. Investment of Moneys. Moneys in any fund or account not immediately needed may be invested in any Permitted Investment allowed by the laws of the State. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The Town Manager/Finance Director shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in the Bond Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the Town grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Ordinance. The Bonds constitute an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues on parity with the lien thereon of Parity Obligations.

Section 20. Additional Bonds and Other Obligations Payable from Municipal Gross Receipts Tax Revenues.

A. Limitations Upon Issuance of Parity Obligations. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the Town of additional bonds or other obligations payable from the Municipal Gross Receipts Tax Revenues and constituting a lien upon the Municipal Gross Receipts Tax Revenues on a parity with, but not prior or superior to, the lien of the Bonds, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Bonds herein authorized, provided, however, that before any such additional Parity Obligations are issued including those parity lien refunding bonds and other parity lien refunding obligations which refund subordinate lien bonds and other subordinate lien obligations, but not including parity lien refunding bonds and other parity lien refunding obligations which refund outstanding Parity Obligations as permitted by Sections 21(B)(i) and 21(D)(i):

(i) the Town is then current in all of the accumulations required to be made in the Bond Fund pursuant to Section 17; and

(ii) the Municipal Gross Receipts Tax Revenues received by the Town for the Fiscal Year immediately preceding the date of issuance of such additional Parity Municipal Gross Receipts Tax Obligations shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on the then Outstanding Bonds, all other then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding any reserves therefor); provided that if such additional Parity Obligations are issued as variable rate obligations, the highest interest rate allowed by the instruments authorizing such additional Parity Obligations shall be used in making such calculation.

B. Certification or Opinion Regarding Municipal Gross Receipts Tax Revenues. A written certificate or opinion by the Town Manager/Finance Director, that the Municipal Gross Receipts Tax Revenues are sufficient to pay the required amounts under the test in paragraph (A) of this Section, shall conclusively determine the right of the Town to issue additional Parity Obligations. The Town Manager/Finance Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing in this Ordinance contained shall be construed in such a manner as to prevent the issuance by the Town of additional bonds or other obligations payable from the Municipal Gross Receipts Tax Revenues and constituting a lien upon the Municipal Gross Receipts Tax Revenues subordinate, inferior and junior to the lien on the Bonds.

D. Superior Obligations Prohibited. Nothing herein contained shall be construed so as to permit the Town to issue bonds or other obligations payable from the Municipal Gross Receipts Tax Revenues having a lien thereon prior and superior to the Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the Town shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Municipal Gross Receipts Tax Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the registered owner or owners thereof, unless the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Town's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Municipal Gross Receipts Tax Revenues is changed (except as provided in Sections 20(C) or 20(D)).

B. Limitations Upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from the Municipal Gross Receipts Tax Revenues shall be issued on a parity with the Bonds, unless:

(i) The lien on the Municipal Gross Receipts Tax Revenues of the outstanding obligations so refunded is on a parity with the lien thereon of the Bonds; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 20(A).

C. Refunding Part of an Issue. The refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. Limitations upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from the Municipal Gross Receipts Tax Revenues shall be issued with such details as the Town may by ordinance provide, but without any impairment of any contractual obligations imposed upon the Town by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, without limitation, the Bonds). If only a part of the outstanding Bonds and any other outstanding obligations of any issue or issues payable from the Municipal Gross Receipts Tax Revenues is refunded, then such obligations may not be refunded without the consent of the registered owner or owners of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 20(A); or

(iii) The lien on the Municipal Gross Receipts Tax Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

Section 22. Equality of Bonds. No Bond shall be entitled to any priority over another in the application of the Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the Council that there shall be no priority among the Bonds regardless of the fact that they may be actually issued and delivered at different times.

Section 23. Protective Covenants. The Town covenants and agrees with each and every registered owner of the Bonds that, so long as any of the Bonds remains Outstanding:

A. Use of Bond Proceeds. The Town, with the proceeds derived from the sale of the Bonds, shall proceed without delay to carry out the Project as herein provided.

B. Payment of Bonds. The Town shall promptly pay the principal of and the interest of every Bond at the place, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof. Such principal and interest are payable solely from the Pledged Revenues; provided that nothing herein shall prevent the Town, in its discretion, from paying such principal and interest from any other legally available funds.

C. Records. The Town shall keep books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

D. Audits. The Town shall, within 270 days following the close of each Fiscal Year, cause an audit of such books and accounts related to the Pledged Revenues to be made by an Independent Accountant unless the audit cannot be conducted within 270 days following the close of each Fiscal Year because the State Auditor or other authority of the State with superintending control of the audit directs that the audit be made by a designated auditor

under different time deadlines or by the State Auditor's office and staff, in which case, the Town will use its best efforts to have the audit completed as soon as possible following the close of the Fiscal Year. The Town will provide Purchaser with a copy of the audit within thirty (30) days of issuance or 270 days after the end of the fiscal year, whichever is earliest.

E. Extending Interest Payments. In order to prevent any accumulation of claims for interest after maturity the Town shall not directly or indirectly, extend or assent to the extension of the time for payment of any claim for interest on any of the Bonds, and it shall not directly or indirectly be a party to or approve any arrangement for such extension or for the purpose of keeping alive any of said interest and in case the time for payment of any such interest shall be extended, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or security of this Ordinance except subject to the prior payment in full of the principal of all Bonds then outstanding, and of matured interest on such Bonds the payment of which not been extended.

F. Performing Duties. The Town shall faithfully and punctually perform all duties with respect to the Bonds required by Constitution and laws of the State of New Mexico, and ordinances and resolutions of the Town, including but not limited to the proper segregation of the Pledged Revenues and their application to the respective funds and accounts.

G. Other Liens. There are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

H. Duty with Respect to Pledged Revenues. If the statutes or any ordinance which materially affects the Pledged Revenues or any part of such ordinances shall ever be held to be invalid or unenforceable, the Town shall immediately take any action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this Ordinance, except as is provided in Section 23(I).

I. Impairment of Contract. Any law or ordinance or resolution of the Town in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining thereto, shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds Outstanding, unless the consent of the required percentage of the Owners of the then Outstanding Bonds is obtained pursuant to Section 32.

J. Town's Existence. The Town shall maintain its corporate identity and existence unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the Town, and is obligated by law to receive and distribute the Pledged Revenues in place of the Town, without affecting to any substantial degree the privileges and rights of any Owner.

K. Tax Covenant. The Town shall not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Town or any facilities financed with the proceeds of the Bonds if such action or omission: (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code; or (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to

the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income. This Section 23(K) shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Town in fulfilling the above covenant under the Code have been met.

Section 24. Defeasance. When all principal, any applicable prior redemption premium, and interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be Outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment as to any Bond when the Council has placed in escrow and in trust with a commercial bank located within or without the State and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may initially be invested) to meet all requirements of principal, interest and any applicable prior redemption premium as the same become due to its maturity or designated redemption date as of which the Town shall have exercised or obligated itself to exercise its option to call such Bond. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Council and such bank at the time of the creation of the escrow or the Federal Securities shall be subject to the redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. Federal Securities within the meaning of this Section 24 shall include only direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America and which are not callable prior to maturity by the issuer of such obligations.

Section 25. Delegated Powers. The officers of the Town be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the summary of publication set out in Section 35 of the Bond Ordinance (with such changes, additions and deletions as they may determine), the distribution of material relating to the Bonds, the printing of the Bonds, the printing, execution and distribution of a Preliminary and final Official Statement, and the execution and delivery of the Bond Purchase Agreement, the Continuing Disclosure Undertaking and of such certificates as may be required by the Purchaser, the Bond Purchase Agreement, or bond counsel. The use and distribution of the Preliminary Official Statement and the Official Statement in connection with the sale of the Bonds to the public is hereby ratified, authorized, approved and acknowledged.

Section 26. Events of Default. Each of the following events is an “Event of Default”:

A. Nonpayment of Principal. Any payment of the principal of any of the Bonds is not made when due and payable, either at maturity, upon acceleration, by proceedings for prior redemption, or otherwise.

B. Nonpayment of Interest. Any payment of any installment of interest on the Bonds is not made when the same becomes due and payable or within 30 days thereafter.

C. Default of any Provision. Any failure by the Town to observe or perform

any covenant, condition or agreement on its part to be observed or performed (other than as referred to in Section 26(A) or Section 26(B)), which failure continues for a period of 60 days after written notice specifying the failure and requesting that it be remedied has been given to the Town by the Owners of 25% in principal amount of the Bonds then Outstanding.

D. Bankruptcy or Insolvency of Town. (1) The Town shall (a) apply for or consent to the appointment of or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the Town or of all or a substantial part of its property, (b) commence a voluntary case under the Federal Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, or reorganization or (2) a proceeding or case shall be commenced, without application or consent of the Town, in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Town, (b) appointment of a trustee, receiver, custodian, liquidator or the like of the Town or of all or a substantial part of its assets, or (c) similar relief in respect of the Town under any law relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

Section 27. Remedies Upon Default. Upon the occurrence and during the continuance of any Event of Default, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, including but not limited to a trustee or trustees therefor, may proceed against the Town, the Council, and its agents, officers and employees to protect and enforce the rights of any Owner under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for specific performance of any covenant or agreement contained herein or in an award or execution of any power herein granted for the enforcement of any power, legal or equitable remedy as such Owners may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any registered owner, or to require the Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds then Outstanding. The failure of any Owner so to proceed shall not relieve the Town or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege or any Owner (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

During any period that the Bonds are in default, interest on the Bonds shall accrue at the Default Rate as provided herein.

Section 28. Duties Upon Default. Upon the occurrence and during the continuance of any Event of Default, the Town shall do and perform all proper acts on behalf of and for the Owners to protect and preserve the security created for the payment of the principal of and interest on the Bonds promptly as the same become due. In the event the Town fails or refuses to proceed as provided in this Section 28, the registered Owners of not less than 25% in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of the Owners as hereinabove provided.

Section 29. Federal Tax Matters.

A. Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The Town has no "subordinate entities" with authority to issue tax-exempt obligations within the meaning of that Section of the Code. In that connection, the Council hereby covenants that the Council in or during the calendar year in which the Bonds are issued, (i) will not designate as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code tax-exempt obligations, including the Bonds, in an aggregate principal amount in excess of ten million dollars and (ii) will not issue tax-exempt obligations within the meaning of Section 265(b)(4) of the Code, including the Bonds and any qualified 501(c)(3) bonds as defined in Section 145 of the Code (but excluding obligations, other than qualified 501(c)(3) bonds, that are private activity bonds as defined in Section 141 of the Code), in an aggregate principal amount exceeding ten million dollars.

B. Tax Compliance. The Town (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excludable from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government from the Rebate Fund, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

C. Rebate Fund. In furtherance of the covenants set forth in the preceding paragraph, the Town hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested pursuant to the procedure provided herein for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the Town, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The Town shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The Town shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted first to the Bond Insurer to the extent of any amounts owed to the Bond Insurer and then to the Town.

D. Determination of Taxability. A determination of taxability shall be made upon (a) any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction to the effect that Bond Interest is Taxable, or (b) the delivery to the Purchaser or the Town of an opinion of nationally recognized bond counsel, to the effect that Bond Interest is Taxable. A determination of taxability also shall be deemed to have occurred on the first to occur of the following:

(i) the date when the Town files any statement, supplemental statement, or other tax schedule, return or document, which discloses that Bond Interest is Taxable;

(ii) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the date of this Indenture which has the effect that Bond Interest is Taxable; or

(iii) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an approving opinion of nationally recognized bond counsel.

Upon a determination of taxability, the Bonds shall accrue interest at the Taxable Rate.

Section 30. 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 31. Repealer Clause. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution or part of any ordinance or resolution heretofore repealed.

Section 32. Amendment. This Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained herein, to add to the covenants and agreements in this Ordinance for the protection or benefit of the Owners, to subject to this Ordinance additional revenues, properties or collateral, to comply with the provisions of the Code, or to comply with any rule or regulation of the Securities and Exchange Commission relating to the Bonds. Except as provided above, this Ordinance may be amended or supplemented by ordinance adopted by the Council in accordance with the laws of the State, without receipt by the Town of any additional consideration but with the written consent of the Owners of 75% of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that no such ordinance (without the consent of the registered owners of all of the Bonds authorized by this Ordinance and outstanding at the time of adoption of such amendatory or supplemental ordinance) shall have the effect of permitting:

(i) An extension of the maturity of any Bond; or

(ii) A reduction in the principal amount of any Bond, the rate of interest thereon or the prior redemption premium due in connection therewith; or

(iii) The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Ordinance; or

(iv) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(v) The establishment of priorities as between Bonds issued and outstanding under the provisions of this Ordinance; or

(vi) The modification of or otherwise affecting the rights of the registered owners of less than all of the Bonds then outstanding.

Notwithstanding the foregoing, prior to the issuance of the Bonds, this Ordinance may be amended by resolution of the Town Council to cure, correct or supplement any defect or inconsistent provision contained herein.

Section 33. Payment Due on Other Than Business Days. In any case where the date of payment of principal, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds, or the date for performing any act or exercising any right, shall be a day other than a business day, then payment of interest or principal and premium, if any, or the performance of such act or exercise of such right need not be made on such date but may be made on the next succeeding business day with the same force and effect as if it had been made on the date scheduled for such payment, performance, or exercise.

Section 34. Ordinance Irrepealable. After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as therein provided, or have been deemed paid as provided in Section 24.

Section 35. Publication of Ordinance. The following notice shall be published one time in the *Silver City Daily Press*, being a legal newspaper published and of general circulation in the Town, as soon as is practicable following the adoption hereof:

(Form of Notice of Adoption)

TOWN OF SILVER CITY, NEW MEXICO  
NOTICE OF ADOPTION OF ORDINANCE NO. 1245

Notice is given of the adoption by the Town Council of the Town of Silver City, New Mexico of its Ordinance No. 1245 on April 12, 2016, relating to Town of Silver City, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2016. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE OF THE TOWN OF SILVER CITY,  
NEW MEXICO MUNICIPAL GROSS RECEIPTS TAX IMPROVEMENT  
REVENUE BONDS, SERIES 2016 IN AN AGGREGATE PRINCIPAL

AMOUNT OF \$800,000 FOR THE PURPOSE TO (1) FINANCE ACQUISITION OF EQUIPMENT FOR THE TOWN'S SOLID WASTE SYSTEM FOR THE BENEFIT OF THE TOWN AND ITS RESIDENTS, AND (2) PAY COSTS OF ISSUANCE OF THE SERIES 2016 BONDS; PROVIDING THAT THE SERIES 2016 BONDS WILL BE PAYABLE AND COLLECTIBLE FROM AND SECURED BY A PLEDGE OF THE 1/4<sup>th</sup> PERCENT MUNICIPAL GROSS RECEIPTS TAX DISTRIBUTED TO THE TOWN PURSUANT TO SECTION 7-19D-9 NMSA 1978, AS AMENDED, AND TOWN ORDINANCE NO. 1237; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM SAID TAX PROCEEDS; PROVIDING THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE METHOD OF PAYING SUCH AND THE SECURITY THEREFOR; PRESCRIBING OTHER DETAILS CONCERNING THE BONDS AND TAX PROCEEDS, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH AND THE FORM, TERMS, CONDITIONS AND MANNER OF EXECUTION OF THE BONDS; RATIFYING ALL ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; AND REPEALING ORDINANCES IN CONFLICT HEREWITH.

The title sets forth a general summary of the subject matter contained in the ordinance.

Complete copies of the ordinance are on file in the Office of the Town Clerk and are available for inspection and/or purchase during regular office hours. This Notice constitutes compliance with Sections 6-14-4 through 6-14-7 NMSA 1978.

(End of Form of Notice of Adoption)

Section 36. Interested Parties. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Town, the Registrar, the Paying Agent, the Purchaser and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof.

Section 37. Limitation on Town's Liability. NOTWITHSTANDING ANY PROVISION OF THIS ORDINANCE TO THE CONTRARY, THE OBLIGATIONS OF THE TOWN UNDER THIS ORDINANCE ARE SPECIAL, LIMITED OBLIGATIONS OF THE TOWN PAYABLE SOLELY FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS. NEITHER THE FAITH AND CREDIT, NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE TOWN, IS PLEDGED TO THE PAYMENT OR PERFORMANCE OF SUCH OBLIGATIONS. NO AGREEMENTS OR PROVISIONS CONTAINED IN THIS ORDINANCE OR ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL GIVE RISE TO ANY PECUNIARY LIABILITY OF THE TOWN, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY OR CONSTITUTE A CHARGE AGAINST THE TOWN'S GENERAL CREDIT, OR OBLIGATE THE TOWN FINANCIALLY IN ANY WAY, EXCEPT WITH RESPECT TO THE PLEDGED REVENUES, AND THEIR APPLICATION AS PROVIDED IN THIS

ORDINANCE. NO FAILURE OF THE TOWN TO COMPLY WITH ANY TERMS, COVENANTS OR AGREEMENTS IN THIS ORDINANCE OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL SUBJECT THE TOWN, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY TO ANY PECUNIARY CHARGE OR LIABILITY EXCEPT TO THE EXTENT THAT THE SAME CAN BE PAID OR RECOVERED FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS.

Section 38. Governing Law. All rights and obligations of the parties with respect to the Bonds and this Ordinance shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this Ordinance shall be in federal or state district court located in the State.

PASSED AND ADOPTED THIS 12<sup>th</sup> DAY OF APRIL, 2016 BY A VOTE OF \_\_\_\_ FOR AND \_\_\_\_ AGAINST.

TOWN OF SILVER CITY, NEW MEXICO

\_\_\_\_\_  
Ken Ladner, Mayor

(SEAL)

Attest:

\_\_\_\_\_  
Ann L. Mackie, Town Clerk

Councilor \_\_\_\_\_ then moved that the ordinance as filed with the Town Clerk at this meeting be passed and adopted. Councilor \_\_\_\_\_ seconded the motion.

The question being upon the passage and adoption of the ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Those Voting Nay:

Those Absent:

The Mayor thereupon declared that at least three-fourths of all the members of that Council having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted.

After consideration of matters not relating to the Bonds, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

TOWN OF SILVER CITY, NEW MEXICO

---

Ken Ladner, Mayor

(SEAL)

Attest:

---

Ann L. Mackie, Town Clerk