

Work Session of the City Council, City of Farmington, New Mexico, held Tuesday, March 5, 2013 at 9:00 a.m. in the Executive Conference Room at City Hall, 800 Municipal Drive, Farmington, New Mexico, in full conformity with the rules, regulations and ordinances of the municipality.

At such meeting the following were present, constituting a quorum:

MAYOR	Tommy Roberts
COUNCILORS	Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel

Constituting all the members of the Governing Body.

Also present were:

CITY MANAGER	Rob Mayes
ASSISTANT CITY MANAGER	Bob Campbell
DEPUTY CITY ATTORNEY	Jennifer Breakell
CITY CLERK	Dianne Fuhrman
DEPUTY CITY CLERK	Melody Coyner

EMPLOYEE OF THE MONTH PROGRAM AWARD

Employee Council President Shannon Ben recognized Electronic Technician II Daniel Anglin as the Employee of the Month award recipient for February 2013. Mr. Anglin was presented with a plaque and a gift certificate and the Mayor and Council expressed their appreciation for his dedication to the City.

UPDATE ON SAN JUAN GENERATING STATION

Electric Utility Director Mike Sims introduced Ron Darnell, Public Service Company of New Mexico ("PNM") Senior Vice President for Public Policy.

Mr. Darnell introduced Matt Jaramillo, Governmental Affairs, and Carol Radosevich, Director of Economic Development and Stakeholder Relations, who were present in the audience.

Referring to the handout provided to the Council, Mr. Darnell briefly reviewed the agreement with the Environmental Protection Agency ("EPA") proposing that PNM 1) retire Units 2 and 3 of the San Juan Generating Station ("SJGS") by December 31, 2017; 2) install selective non-catalytic reduction ("SNCR") emission control technology on Units 1 and 4 in early 2016; and 3) continue operation of Units 1 and 4 without setting a retirement date. Further, the agreement would require the State of New Mexico to agree to submit to the EPA for approval a revised state implementation plan, including a Best Achievable Retrofit Technology ("BART") determination for nitrogen oxides ("NOx") for SJGS. He contended that the agreement will lead to a more balanced and diversified fuel mix for PNM (from 60 to 40 percent coal) which will help offset any new future EPA requirements and noted that Units 1 and 4 will be fully depreciated in 2052. He reminded the Council that PNM was required to comply with the Federal Implementation Plan ("FIP") prior to the agreement which required the installation of selective catalytic reduction ("SCR") technology on all four units by September 2016, at an estimated cost of \$824 to \$910 million. He noted that the State proposal calling for SNCR on all four units, estimated at a cost of \$85 to \$90 million, was not approved by the EPA. Mr. Darnell also reviewed the objectives and benefits of the agreement; explained that its key goals lessen the cost impact for consumers, has broad environmental benefits and considers the economic impact to the Four Corners area and the State; and reviewed the steps for implementation of the agreement and the safeguards if the agreement does not proceed as planned. In addition, he stated that PNM has agreed to construct a 150 to 200 megawatt natural gas peaking facility in the Four Corners area at an estimated cost of \$220 million for the facility and pipeline; noted that there will be no

layoffs as a result of retiring Units 2 and 3; explained that there will be about 350 jobs related to the construction of the peaking facility; and stated that PNM is committed to providing over \$1 million of shareholder money to the Navajo Nation and the Four Corners Economic Development group ("4CED").

Contending that the State implementation plan ("SIP") was the most economic approach to dealing with regional haze, Mayor Roberts questioned why PNM now supports the subject agreement. In response Mr. Darnell stated that PNM was concerned with the risks involved in dealing with the EPA and their ability to prevail in court.

In response to inquiry from Councilor Fischer, Mr. Darnell stated that he does not anticipate a change of the EPA's philosophy regarding coal-fired power plants if Gina McCarthy is confirmed as the head of the EPA.

Responding to Councilor Sandel, SJGS Plant Manager Greg Smith reported that Units 2 and 3 produce 375 and 544 megawatts of power per hour, respectively, and that it takes three million tons of coal per year to generate that power.

Mr. Darnell responded to numerous questions from Councilor Sandel regarding the economic loss to the State and the Four Corners area with the retirement of Units 2 and 3. Following discussion, Mr. Darnell stated that he will provide Councilor Sandel with the estimated amount of lost revenue.

Following further discussion, Councilor Sandel expressed frustration that the community was not kept informed during agreement negotiations and stated that he is concerned with the impact that the agreement will have on the State and local economy.

Following discussion regarding the proposed natural gas peaking facility and the potential for growth, Mr. Darnell stated that he would be willing to provide the names of consultants interested in natural gas-powered generation in the Four Corners.

Lengthy discussion followed concerning PNM's \$150,000 contribution to 4CED and the mission and goals of 4CED.

Following brief discussion regarding jobs at SJGS, Mr. Darnell stated that he will provide the Council with the number of coalmining-related jobs currently at SJGS and the anticipated number of employees in 2018 at Units 1 and 4 and the gas peaking plant. Following further discussion, Councilor Sandel clarified that he would also like to know the net loss of revenue to the State for the reduction in coal extraction; the loss of revenue, if any, to the transmission coming out of the State; and the number of job losses that will be associated with the loss of coalmining and power generation at SJGS.

Councilor Sandel expressed disappointment that the New Mexico Environmental Department is promoting a plan that has, from his perspective, so many detrimental effects to our community.

Councilor Darnell expressed appreciation for PNM's commitment to maintain 40 percent coal-fired generation and to their support of 4CED.

Councilor McCulloch expressed appreciation for PNM's commitment to the Four Corners area and stated that she supports the goals and mission of 4CED.

In response to inquiries from Mayor Roberts, Mr. Darnell stated that the value of the lost jobs is approximately \$80,000 per year and that financially PNM is not in a position to get involved in merchant generation but would be willing to help facilitate such a venture.

Councilor Fischer asked that Mr. Darnell have PNM's bond counsel contact Mike Groshek, the City's bond counsel, regarding the potential impact the retirement of Units 2 and 3 could have on the outstanding pollution control revenue bonds that the City has issued to PNM and provide the Council with their conclusion(s).

Councilor Sandel suggested that it may be worthwhile to get a briefing on the 1990 Clean Air Act Amendments in order to better understand "how we got to where we are today."

RESOLUTION NO. 2013-1460/PIÑON HILLS BOULEVARD PEDESTRIAN AND BICYCLE FACILITIES

Public Works Director Jeff Smaka announced that the New Mexico Department of Transportation ("NMDOT") sends out an annual request for projects and stated that staff has identified the need for pedestrian and bicycle facilities on Piñon Hills Boulevard. He requested adoption of Resolution No. 2013-1460 approving such project and accepting Federal Highway Administration Surface Transportation Enhancement ("TPE") funding in the amount of \$450,000. He noted that the City is required to provide 25 percent cash match in the amount \$150,000 which is budgeted in the 401 Fund.

Councilor McCulloch announced for the record that her family owns property on Farmington Avenue from 20th to 30th Streets but suggested that it does not constitute a conflict of interest. She announced her intent to discuss and vote on the item. There were no objections from the Council.

After consideration of proposed Resolution No. 2013-1460, a motion was made by Councilor Darnell, seconded by Councilor Sandel that said resolution be passed and adopted as presented. The roll was called with the following result:

Those voting aye: Dan Darnell
 Mary M. Fischer
 Gayla McCulloch
 Jason Sandel

Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried and Resolution No. 2013-1460 was duly passed and adopted.

RESOLUTION NO. 2013-1461/MUNICIPAL DRIVE RESURFACING PROJECT/ 2013/2014 MUNICIPAL ARTERIAL PROGRAM

Public Works Director Jeff Smaka noted that the New Mexico Department of Transportation ("NMDOT") sends out an annual request for Municipal Arterial Program projects and stated that staff has identified the resurfacing of Municipal Drive from Navajo Street to 20th Street for the project. He requested adoption of Resolution No. 2013-1461 approving such project and accepting funds from NMDOT's 2013/2014 Municipal Arterial Program in the amount of 265,928. He noted that the City is required to provide a 25 percent cash match in the amount of \$88,643 which is budgeted in the 401 Fund.

Responding to Mayor Roberts, Mr. Smaka stated that work on the proposed project will begin in the spring of 2014.

After consideration of proposed Resolution No. 2013-1461, a motion was made by Councilor Darnell, seconded by Councilor McCulloch that said resolution be passed and adopted, as presented. The roll was called with the following result:

Those voting aye: Dan Darnell
 Mary M. Fischer
 Gayla McCulloch
 Jason Sandel

Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried and Resolution No. 2013-1461 was duly passed and adopted.

BID/RECLOSERS AND REGULATORS

Purchasing Officer Eddie Smylie reported that bids for purchase of reclosers and regulators (Electric Utility) opened on February 22, 2013 with three bidders participating. He recommended that the bid be awarded to the lowest and best bidder per category after application of five percent in-state preference [Category 1 - Stuart C. Irby (reclosers) \$123,025.03; and Category 2 - Stuart C. Irby (regulators) \$48,902.25],

and that the bid received from Border States Electric (Category 2) be rejected for being non-responsive.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to award the bid for purchase of reclosers and regulators to Stuart C. Irby (Categories 1 and 2), as recommended by the Purchasing Officer, and upon voice vote the motion carried unanimously.

BID/MUNICIPAL OPERATIONS CENTER EXPANSION WEST

Purchasing Officer Eddie Smylie reported that bids for the construction of the western expansion of the Municipal Operations Center (Electric Utility) opened on February 27, 2013 with five bidders participating. He recommended that the bid be awarded to Gentry Construction, Inc. on its low bid after application of five percent in-state preference of \$2,912,931.

Responding to Mayor Roberts, Mr. Smylie confirmed that Jaynes Corporation submitted a protest, contending that the bid from Gentry was nonresponsive and incomplete due to an unsigned bid form and failure to submit a complete contractor's list. He noted that both assertions are true, but explained that the protest has been denied because there were two signed documents in Gentry's bid package that clearly indicate their intent and that none of the incomplete contractor information is required by statute to be included on the bid form. As a result, he announced that the bid from Gentry Construction has been deemed to be responsive.

Following brief discussion, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to award the bid for construction of the western expansion of the Municipal Operations Center to Gentry Construction, Inc. on its low bid of \$2,912,931, as recommended by the Purchasing Officer. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Gayla McCulloch
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Those voting nay:	Jason Sandel
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried.

Following brief discussion, Councilor Fischer asked Mr. Smylie to provide an update to the Council on the projects included in the 2012 Sales Tax Revenue Improvement and Refunding Bond (storm sewer and drainage, animal shelter, Civic Center, fire station #1/fire administration building and the museum expansion). Furthermore, she asked for an update on the renovation of Ricketts Park.

Responding to inquiry from Councilor Sandel, Mr. Smylie confirmed that bids must be awarded to the low bidder, but stated that criteria could be included in the request for proposal process to award points for the purchase of local materials or the hiring of local employees.

BID/CIRCUIT BREAKERS 121kV AND 72.5kV

Purchasing Officer Eddie Smylie reported that bids for circuit breakers 121kV and 72.5kV (Electric Utility) opened on February 26, 2013 with two bidders participating. He recommended that the bid be awarded to ALSTROM Grid, Inc. on its low bid after application of five percent in-state preference of \$130,800.

Thereupon, a motion was made by Councilor McCulloch, seconded by Councilor Darnell to award the bid for circuit breakers 121kV and 72.5kV to ALSTROM Grid, Inc. on its low bid of \$130,800, as recommended by the Purchasing Officer, and upon voice vote the motion carried unanimously.

COUNCIL BUSINESS

Permission to Draft a Resolution Establishing Policy that members of the Governing Body be required to have an Email Account

Mayor Roberts asked the Council for permission to draft a Resolution establishing policy that members of the governing body be required to have an email account. He contended that the discussions about this issue over the past few weeks have been too narrowly-focused

on reacting to Councilor Fischer's assertions that she has not received the same information as other members of the Council and stated that he believes that the discussion should be expanded to encompass the expectations of the constituency. He announced that it is his personal opinion that Councilor Fischer's refusal to communicate by email is not effective and likened it to him refusing to accept telephone calls or receive mail at his office. As a result, he asked for a consensus of the Council to allow him to draft a resolution establishing a policy that requires elected officials to have an email account.

Councilor McCulloch asked whether this issue has been discussed in other communities to determine if precedence has been set. In response, Mayor Roberts announced that he has asked Government Relations Director Elizabeth Isenberg to contact other municipalities to determine if they have a similar policy.

Councilor Fischer contended that the Mayor has mischaracterized the entire issue and contended that "singling her out" appears to be the height of pettiness. She reiterated that her initial complaint was that she was not provided the information that she requested from the Mayor and City Manager in a timely manner even though the request was made through the Inspection of Public Records Act. She announced that she has repeatedly asked that she be provided hard copies of all emails that are sent to the Council and stated that she prefers for this practice to remain in effect. Furthermore, Councilor Fischer pointed out that she prefers to communicate with her constituents in person rather than by email and argued that the proposed policy is a nonissue and a waste of time. She also questioned staff's authority to assign her an email address and password (which was not keep confidential) without her consent and asked whether such actions infringed upon her privacy. Furthermore, she pointed out that Assistant City Manager Bob Campbell had advised her that she was the only one who had a key to her locked office following an incident where documents were erroneously removed from her office by an Administrative Aide. However, staff from the Information Technology Department was directed to enter Councilor Fischer's office and install a computer without her knowledge or approval. She reiterated her position that the proposed resolution is a move to force her to do something that she does not want to do and she urged Mayor Roberts to "give it up." She stated that she is amazed that Mayor Roberts is so insistent on telling her how to do her job and contended that it is not his role.

Mayor Roberts maintained his position that this matter is important and should be discussed in an effort to determine how communication should occur amongst the elected body, staff and their constituents. He stated that he believes that it is necessary to establish a policy that establishes email for the purpose of providing better access and improving communication. He advised Councilor Fischer that she will not have to use the email account if the proposed policy is adopted and assured her that he is willing to draft the initial resolution so that staff will not be required to take their focus off of other pressing matters. Providing further explanation, Mayor Roberts stated that he initially directed staff to provide her an email account because she claims that City Manager Rob Mayes did not inform her of the second officer-involved shooting.

Councilor Sandel asked if the Mayor is proposing to amend the Governing Body Rules of Procedure to include the proposed policy and questioned whether he will be suggesting that the governing body have Facebook and/or Twitter accounts as well. Furthermore, he asked if the Mayor will be proposing that computers or laptops be provided to the councilors as a result of the proposed policy, noting that there is the potential that a councilor may not have internet access at their home. In response, Mayor Roberts stated that he is proposing that it be a stand-alone policy; explained that he is not proposing any other accounts besides email; and assured the Council that adequate training and equipment will be provided if needed. Councilor Sandel pointed out that the State Legislature provides computers only if it is requested and noted that a number of the legislators do not have or use them.

Councilor Sandel asked if City Attorney Jay Burnham has drafted the memorandum explaining the Mayor's level of authority to direct a staff member to do something without the consent of the Council, as directed at the February 26, 2013 regular City Council meeting. In response, Deputy City Attorney Jennifer Breakell explained that Mr. Burnham has been out ill most of the week and apologized for the delay. As a result,

Councilor Sandel pointed out that the City Manager acted at the direction of the Mayor without the consent of the Council and questioned whether such action should have been taken. In response, Mayor Roberts asserted that he did have the authority to direct Mr. Mayes to create the email account and direct that a computer be installed in Councilor Fischer's office because the Mayor is designated as the Chief Executive Officer ("CEO"), pursuant to state statutes, and that the Council is simply the legislative body. However, he agreed that there does not appear to be a "clear-cut" delegation of this power. Councilor Sandel argued that the CEO of an organization can only act upon the will of its board members and is only authorized to vote in the event of a tie. He also maintained that the proposed email policy should be included in the Governing Body Rules of Procedure. Furthermore, Councilor Sandel recalled that the City Manager had suggested that Councilor Fischer be provided a cellular telephone, computer and an email address so that she could receive email and text messages. Mayor Roberts clarified that he only requested that an email account be set-up for her and that access to a computer and training be given in the event that it is needed. He stated that he has no desire for Councilor Fischer to be issued a cellular telephone and advised that his proposed policy will only focus on email accounts.

Following further consideration, Councilor Sandel stated that he does not object to considering amendments to the Governing Body Rules of Procedure, noting that staff has yet to schedule for consideration the suggestions that he made concerning consensus votes of the Council. Furthermore, he voiced frustration for the fact that the legal department has not proposed policies regarding ethics or campaign contribution reporting to the Council for consideration even though direction has been granted.

Voicing his approval, Councilor Darnell announced that it is his opinion that a member of the governing body ought to be given the opportunity to propose policies.

Councilor Fischer questioned how the proposed email policy would apply if a member of the governing body is visually impaired, noting that she has had surgery on both eyes and chooses not to use a computer because it gives her a headache. She asked that staff contact the Cities of Albuquerque, Santa Fe, Las Cruces, Roswell and Hobbs, San Juan County and the state and federal legislators to determine if they have policies that require elected officials to have an email account. She also noted that she has a total of five telephone lines, two cellular, two local land lines and one land line in Minnesota. She explained that the reason she does not publish the cellular telephone numbers is because she does not want to be put in the position of talking on the phone while driving and explained that she does not have internet service at her home because she does not own a computer. Noting that her constituents have not expressed concern to her about her accessibility, Councilor Fischer speculated that many of her constituents do not own computers and contended that she may be the most accessible member of the governing body. In closing, she announced that she intends to ask the Attorney General for his opinion on the Mayor's authority to demand that councilors have an email account and stated that she believes that staff may also be violating the Open Meetings Act, the Inspection of Public Records Act and the procurement code.

Mayor Roberts took exception to Councilor Fischer's comments regarding accessibility and stated that he does not see her at the many public events that he is expected to attend which belies her comments.

Thereupon, it was the consensus of a majority of the Council to allow the Mayor to draft a resolution establishing a policy that requires elected officials to have an email account. Councilor Fischer expressed her disapproval.

Convention and Visitors Bureau Embezzlement Case

Councilor Fischer asked for an update from staff on the status of the Farmington Convention and Visitors Bureau ("CVB") embezzlement case. In response, Police Chief Kyle Westall announced that the investigation is closed because the District Attorney's Office has decided not to pursue the matter any further. He advised that the City may be able to pursue civil recourse if it so chooses. Providing further explanation, Deputy City Attorney Jennifer Breakell announced that the CVB has made a claim to the Estate of Debbie Dusenbery in an effort to recoup some of the damages and noted that Personal Representative Larry Thrower will not

be opposing that claim. However, she stated that there is not enough money in the estate to recover the full amount.

Councilor Fischer voiced frustration for the fact that the City will never know the names of those individuals who personally benefitted from the trips and stated that she finds it appalling that none of those individuals have stepped forward to offer reimbursement.

Councilor Sandel questioned whether staff intends to ask Becky Walling, the beneficiary of Debbie Dusenbery's life insurance policy, to revert the proceeds to the City in an effort to recoup some of the damages. In response, City Manager Rob Mayes announced that the CVB has hired an attorney for the purpose of aggressively pursuing any reimbursements that they can from the estate.

Following brief discussion, it was the consensus of the Council to direct staff to schedule the CVB's attorney for a future agenda for the purpose of providing an update on what is being done to recoup some of the embezzled funds.

Four Corners Economic Development Service

Referring to an article that was published in today's edition of the *Daily Times* concerning the hiring of a Chief Executive Officer for the newly-formed Four Corners Economic Development Service ("4CED"), Councilor Sandel questioned whether the City has a representative on the 4CED board who could provide an update on the status of the hiring process, including the names of the candidates. He also asked if the Council will have any input on the hiring process and stated that he would like an understanding about the formal arrangement that is being formulated between the City and 4CED.

In response, Mayor Roberts announced that he will arrange for a 4CED representative to address the Council concerning these matters. There were no objections from the Council.

CLOSED MEETING

A motion was made by Councilor Darnell, seconded by Councilor McCulloch to close the meeting to discuss requests for proposals for temporary employment services and the alcoholic beverage concessionaire at the Civic Center. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel
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Those voting nay:	None
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The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

The Mayor convened the closed meeting at 11:37 a.m. with all members of the Council being present.

Following the closed meeting, during which meeting the matters discussed were limited only to those specified in the motion for closure, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to open the meeting for further business, and upon voice vote the motion carried unanimously.

The open meeting was reconvened by the Mayor at 11:43 a.m. with all members of the Council being present.

REQUEST FOR PROPOSALS/TEMPORARY EMPLOYMENT SERVICES

Purchasing Supervisor Kristi Benson announced that proposals for temporary employment services (General Services) opened on February 20, 2013 with two offerors participating. She requested authorization to commence negotiations with SOS Staffing Services, Inc. as the top evaluated offeror.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to authorize staff to commence negotiations for a contract for temporary employment services with SOS Staffing Services,

Inc., as recommended by the Purchasing Supervisor, and upon voice vote the motion carried unanimously.

REQUEST FOR PROPOSALS/ALCOHOLIC BEVERAGE CONCESSIONAIRE AT THE CIVIC CENTER

Purchasing Supervisor Kristi Benson announced that proposals for the alcoholic beverage concessionaire at the Civic Center (Parks, Recreation and Cultural Affairs) opened on February 13, 2013 with one offeror participating. She recommended that the contract be awarded to Zebra Enterprises as the sole proposal is deemed to be advantageous and in the best interest of the City.

In response to inquiry from Councilor Sandel, City Manager Rob Mayes stated that nothing in the City's governmental liquor license would allow Zebra Enterprises to provide alcohol at other City facilities. Purchasing Officer Eddie Smylie assured him that he will make certain that the contract does not set forth such a requirement.

In response to inquiry from Councilor Sandel, Assistant City Manager Bob Campbell reported that staff is still working to resolve the advertising issues between the City and Lance Johnson of Zebra Enterprises with regard to his operation of a restaurant and alcohol concession at the Four Corners Regional Airport. As a result, Councilor Sandel stated that it is difficult for him to vote to approve a new contract without resolution of the issues at the airport.

Responding to Councilor Sandel, Mr. Mayes stated that it is important to have the contract in place in a timely manner, particularly prior to the opening of the new exhibit hall at the Civic Center.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to award the proposal for alcoholic beverage concessionaire at the Civic Center to Zebra Enterprises, as recommended by the Purchasing Supervisor. The roll was called with the following result:

Those voting aye:	Dan Darnell Gayla McCulloch
Those voting nay:	Mary M. Fischer Jason Sandel

The Mayor voted in favor of the motion and declared the motion carried.

There being no further business to come before the Council, the meeting was adjourned at 11:57 a.m.

APPROVED this 26th day of March, 2013.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk