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**MINUTES OF A REGULAR MEETING
OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO
HELD AT THE TOWN HALL
February 24, 2014**

The Governing Body of the Town of Bernalillo met in a regular session within the law and rules of the Town on February 24, 2014, at 6:30 P.M.

Upon Roll call the following members were found to be present:

PRESENT:

Councilor Montoya
Councilor Prairie
Councilor Sisneros
Councilor Jaramillo
Mayor Torres

ALSO PRESENT:

Matthew Spangler	William Stephenson
Ron Dennis	James Pike
Carolyn Kennedy	Lynn Montgomery
Debbie Kilfoy	Ron Alfred
Shane Mahoney	Maureen Oaks
Steve Amiot	Margie Amiot
Wayne Armstrong	Kathleen Matthews

ABSENT:

Others Present Not Identified

APPROVAL OF AGENDA: 4a)

Councilor Sisneros moved to approve the agenda as amended. The motion was seconded by Councilor Montoya and the motion carried unanimously.

PRESENTATION: 5a)

Mayor Torres unveiled the picture of Patricia A. Chávez which takes its place on the wall recognizing all former mayors of the Town of Bernalillo. This was an honor that was well deserved and long overdue. Former Mayor Patricia Chávez served from 2006-2010.

RECOGNITION: 6a)

Mayor Torres recognized Police Officer Jeffery McGinnis and Police Officer Andy Chapa for their recovery and great police work in recovering stolen property on the same day from a home invasion. The care and professionalism that Officer Chapa gave the victim was outstanding in her letter to the Acting Chief Lt. Stoyell she thanked him for his professionalism. We are blessed to have people that work in the Town of Bernalillo that go above and beyond.

Acting Chief Lt. Stoyell stated that being that both officers have been with the agency for several years they were able to identify the individuals. It was a prime example of their professionalism and professional police work.

47 **RECOGNITION: 6b)**

48 Mayor Torres recognized Councilor Montoya for his outstanding service to the Town of
49 Bernalillo as a Councilmember.

50
51 **PUBLIC HEARING: 7a)Discussion, Consideration and Action on Adoption of**
52 **Ordinance #275 Extending and Increasing Corporate Limits of the Town of Bernalillo New**
53 **Mexico, Pursuant to the Provisions Forth in 3-7-17 and 3-7-18 NMSA 1978, By Annexing**
54 **Thereto a Certain Tract of Land Contiguous to and Not Embraced Within the Present**
55 **Limits, Presenter: Janet Cunningham-Stephens**

56
57 **AN ORDINANCE EXTENDING AND INCREASING THE CORPORATE LIMITS OF**
58 **THE TOWN OF BERNALILLO, NEW MEXICO, PURSUANT TO THE PROVISIONS**
59 **FORTH IN 3-7-4, 3-7-17 AN 3-7-18 NMSA 1978, BY ANNEXING THERETO A**
60 **CERTAIN TRACT OF LAND CONTIGUOUS TO AND NOT EMBRACED WITHIN**
61 **THE PRSENT LIMITS OF THE TOWN OF BERNALILLO**

62
63 **BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNALILLO:**

64
65 **Section 1. Intent.** This ordinance approves and accepts the annexation of real property into
66 The corporate boundaries of the Town of Bernalillo, as requested in the Fisher
67 Sand and Gravel Annexation Petition.

68
69 **Section 2. Legal Requirements Met.** The Annexation Petition and Annexation Petition and
70 Annexation Map of Fisher Sand and Gravel having been presented to the
71 Governing Body of the Town of Bernalillo, pursuant to the petition method of
72 Annexation, in full compliance with state law as set forth in 3-7-4, 3-7-17 and
73 3-7-18 NMSA 1978, the Governing Body finds as follows:

- 74 **A.** The Annexation Petition seeks to have annexed into the corporate
75 boundaries territory that is contiguous to the Town of Bernalillo.
76 **B.** The Annexation petition is signed by the owners of a majority of
77 the number of acres in the contiguous territory proposed to be
78 annexed and the relationship of the territory proposed to be
79 annexed to the existing boundary of the Town of Bernalillo.
80 **C.** The Annexation Petition has been presented for consideration and
81 Is recommended for approval pursuant to the standards and
82 requirements for annexation set forth in all applicable laws
83 and ordinances.

84
85 **Section 3. Consent and Approval.** The Governing Body hereby annexes the property
86 described in the Fisher Sand and Gravel Annexation Petition and hereby
87 consents to and approves the annexation of such contiguous territory being more

88 particularly described in the legal description of the contiguous territory
89 attached hereto as Exhibit A and incorporated herein by reference in its entirety.
90

91 **Section 4.** Zone Map Amendment. Purpose: That the property described on Exhibit A
92 attached hereto consisting of approximately 43,4705 acres, more or less, shall
93 be annexed into the Town of Bernalillo and zoned as follows and a provided in
94 the annexation and zoning map attached hereto and incorporated herein as
95 Exhibited B:

- 96 A. All permissive and conditional uses as allowed in the C-1 zoning
97 district as to those areas of the annexed property identified as Lots 1
98 through 4, inclusive, on Exhibit B attached hereto.
99 B. All permissive and conditional uses as allowed in the M-1 zoning
100 district as to those areas of the annexed property identified as Lots 5
101 through 7, inclusive, on Exhibit B attached hereto.
102 C. Municipal and drainage facilities as allowed in an SU (special use)
103 zoning district as to those areas of the annexed property identified as
104 Lots 8 and 9 Exhibit B attached hereto.
105 D. As to the entire annexed property, the property owner shall have the
106 right to extract sand, gravel and similar products as a part of the
107 grading process for the property and commercially sell such minerals;
108 completion of final grading for the property; or (ii) fifteen (15) years
109 after the Effective Date of this Ordinance.
110

111 **Section 5. Findings.** The following are the finding for Annexation and Zoning approval:
112 A..All state statutory requirements for approval of annexation have been
113 met.
114 B. The zoning designations proposed for the property as shown on
115 Exhibit B attached hereto are in conformance with the Town of
116 Bernalillo Comprehensive Plan with all applicable Town zoning
117 Ordinances.

118 **Section 6. Severability Clause.** If any section, paragraph, clause or provision of this
119 Ordinance, or any section, paragraph, clause or provision of any regulation
120 Promulgated hereunder shall for any reason be held to be invalid, unlawful
121 or unenforceable, the invalidity, illegality or unenforceability of such section,
122 paragraph, clause or provision shall not affect the validity of the remaining
123 portions of this Ordinance or the regulation so challenged.
124 Exhibited B:

125 **Section 7. Compiling Clause.** The Ordinance shall be incorporated in and compiled as
126 Part of the Revised Ordinances of the Town of Bernalillo.

127 **Section 8. Effective Date** That Ordinance becomes effective ten days after adoption.
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Town Council Meeting
Regular Meeting
February 24, 2014

Staff Report

Subject:

The applicant, Fisher Sand and Gravel – New Mexico, Inc., represented by Agent, Lastrapes, Spangler and Pacheco, P.A., is requesting Annexation of the subject property by the Town of Bernalillo, and initial zoning designation. The subject site consists of 43.4705 acres, more or less, designated as Lots 2 and 14, in Section 32, Township 13 North, Range 4 East, New Mexico Principal Meridian, Sandoval County, and located at 30A Frontage Road East, Placitas, New Mexico.

The request for Annexation and Initial Zoning was heard by the Planning and Zoning Commission on July 19, 2012 at a regularly scheduled public hearing. The Planning and Zoning Commission is a recommending body to the Town Council on annexation requests and zoning designations. The recommendation to the Town Council was to approve the Annexation request and to zone the subject site C-1 (Retail Commercial).

The Planning and Zoning recommendation was forwarded to the Town Council for consideration on September 24, 2012. At that hearing, the applicant stated they would, at their expense, extend water and sewer services to the property, and build a flood control pond and provide an easement for the Eastern Sandoval County Arroyo Flood Control Authority (ESCAFCA). The Council asked for additional information and documentation regarding the annexation. The item was tabled pending the requested information.

The applicant has now provided a letter from New Mexico Department of Transportation (NMDOT) confirming access to the subject site via the NMDOT frontage road, maps illustrating the property and proposed zoning, a letter from the office of Lastrapes, Spangler, and Pacheco, P.A. to the Eastern Sandoval County Arroyo Flood Control Authority (ESCAFCA) confirming Fisher Sand and Gravel’s intent to donate a portion of the property for flood control management, and a water and sewer availability study.

The water and sewer study has been reviewed by the Town’s Public Works Director and

170 discussions have occurred regarding service line extensions and what will be required
171 of the Applicant/Developer. The Planning and Zoning Commission has been apprised
172 that the case is before the Town Council for consideration. Mr. Larry Blair,
173

174
175 Engineer Advisor to ESCAFCA, has been contacted and indicated that discussions
176 between ESCAFCA and Fisher Sand and Gravel have been on-going and that a
177 preliminary design for the pond is almost complete.
178

179 The subject site is located east of Interstate 25 (I-25), south of NM 165 and the
180 interstate interchange, west of Placitas, and north of the South Hill Road exit from I-25.
181

182
183 **Site Data:**
184

185
186 **Zone:** CD-WP - (Community Development – West Placitas District) This site is within
187 the Extraterritorial Zone with Sandoval County. (Placitas Area Plan – I-25
188 Frontage/Bernalillo Interface District)

189 **Surrounding Zoning:** North – Sandia Pueblo (sovereign entity), South – Sandia
190 Pueblo, West – Interstate 25 (I-25), East – federal land

191 **Current Land Use:** Sand and gravel mining

192 **Surrounding Land Uses:** Vacant pueblo land, rural residential, vacant land owned
193 by the federal government, and I-25

194 **Required Lot Size:** Area – Sandoval County (Placitas Area Plan) – one acre

195 **Actual Lot Size:** Property consists of 43.4705 acres

196 **Access:** From the eastside frontage road and private easement

197 **Utilities:** Water and sewer service available from the Town of Bernalillo with
198 developer funded improvements to increase water pressure

199 **Parking:** Not applicable to this proposal

200 **Handicapped Parking:** Not applicable to this proposal

201 **Setbacks:** As prescribed by the Comprehensive Zoning Ordinance for C-1 (Retail
202 Commercial) and M-1 (Light Industrial) zoning
203

204 **Plans, Policies, and Regulations:**
205

206 **Comprehensive Land Use Plan:**

207 The Comprehensive Land Use Plan contains goals and objectives that serve as a guide for
208 policy decisions regarding the future management and development of the Town. A
209 Resolution approving the goals and objectives was adopted by the community on May 13,
210 2002.

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Goals and Objectives applicable to this proposal are as follow:

Form of Development –

Goal: Apply long-range planning and land use management techniques that ensure a desirable mix of land uses and densities in future development.

Objective: Adopt an annexation policy that requires an explanation of the purpose and conditions, the costs and benefits, and the overall impact regarding the annexation of lands to the incorporated area of Town.

Goal: Protect the community from the damaging effects of storm water runoff.

Objective: Develop and implement a storm water pollution control plan and program.

In discussions with the applicant, it has been made clear that in order to provide Town of Bernalillo water and wastewater services, the following actions by the developer are necessary: a) New Mexico Department of Transportation (NMDOT) must approve boring under the interstate and the developer must assume the cost of boring and service line extensions b) Improvements at the developers' expense will be necessary in order to provide adequate water pressure for regular service and fire protection.

Regarding stormwater, the applicant wishes to donate a portion of the site for flood management purposes to ESCAFCA. Given the location, this facility should be helpful in mitigating stormwater flows into the Town of Bernalillo.

Subdivision Regulations (April 1997):

According to Section 14 of the Land Subdivision Regulations and Subdivision Design Standards, adopted by the Town Council in April 1997, the Purpose of the Ordinance is to:

- A. Assure harmonious and orderly development of the Town and the surrounding area and thereby promote the health, safety, and general welfare of the Town and the surrounding area.
- B. Insure the coordination of all streets, utilities, facilities, and all other elements both private and public, of community function within the subdivision with all streets, utilities, and all other elements both public and private as they exist or are planned for in the area of jurisdiction or beyond where applicable.
- C. Secure equitable treatment of all subdivision plans by providing for uniform procedures and standards for observance by subdividers, the Commission and the Council.

Exhibit B shows the conceptual layout of proposed lots and the proposed zoning of each lot. The Exhibit will serve as a reference guide for future subdivision platting.

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Comprehensive Zoning Ordinance:

The applicant has requested C-1, M-1, and Special Use zoning of the subject site.

C-1 (Retail Commercial Zone) allows those commercial and business activities that serve the community on a day-to-day basis, with no minimum lot size requirements regarding area and width (unless in residential use), and a height limitation of 45 feet.

M-1 (Light Industrial Zone) will permit heavy commercial and light manufacturing uses which do not endanger the health and safety of the community and which do not create offensive noise, vibration, smoke, dust, lint, odors, heat or glare. There are no lot area and width requirements; however, the height limitation is 45 feet.

Front, rear and side-yard setback requirements in C-1 are Front 10 feet, Rear 10 feet and no requirement for a Side-Yard setback unless the site abuts the side or rear of a lot in a residential use or a residential zone. Setbacks in M-1 are Front 25 feet, Rear 15 feet, and Side 10 feet unless it abuts a lot in a residential zone. Then the setback is 25 feet.

S-U (Special Use Zone) permits only those uses which require special consideration because of their unusual nature, frequency of occurrence, effect on surrounding property or other similar reason. The boundaries of this zone district are determined on a case-by-case basis. Public facilities, such as Town, State, County, and Federal buildings, structures and facilities are included in this category.

Mainstreet Overlay District:

The Design Guidelines are not applicable due to the location of the subject property.

Staff Recommendation:

APPROVE, based on Findings.

Findings:

1. ANN 14-001/INZO 14-001 (Ordinance 275) is a request by Fisher Sand and Gravel-New Mexico, to annex 43.4705 acres into the corporate limits of the Town of Bernalillo and to receive approval for zoning of the property as provided on the Zoning Map (Exhibit B).
2. The subject site can be serviced by Town of Bernalillo water and wastewater services.
3. Proposed lot sizes exceed Town of Bernalillo minimum criteria.
4. A portion of the subject site (as indicated on Exhibit B) is proposed to be donated to ESCAFCA for a flood management facility as a separate agreement.

- 293 **Condition/s of Approval:**
294 1. All costs to extend water and wastewater service lines to the subject property shall
295 be at the expense of the Applicant/Developer.
296 2. Infrastructure upgrades needed to increase water pressure sufficiently for service to
297 C-1 and M-1 zoned properties and for fire protection will be made in consultation with
298 appropriate Town officials including, but not limited to, the Public Works Director, the
299 Community Development Director, and the Fire Marshal. Improvements will be at the
300 expense of the Applicant/Developer.

301
302 ADDITIONAL CONDITION – Staff Report
303 Fisher Sand and Gravel Annexation and Zoning Request
304 Town Council Public Hearing: 02/24/2014
305

- 306 3. At the point stockpiled material sales or mining activity has ceased, or no later than five (5)
307 years from the date of the approval of Ordinance 275, a reclamation plan must be implemented
308 and completed to the satisfaction of the Town.

309
310 Councilor Jaramillo asked about the water and sewer for this location.

311
312 Andy Edmondson stated that the developer would have to bore under the interstate for sewer and
313 have booster station and additional storage area for that area. Their engineer stated that they are
314 capable of providing what is needed to meet the Town’s requirement for water and sewer.

315
316 Matt Spangler Agent for Fisher Sand and Gravel. Fisher is a general contractor that does business in New
317 Mexico. The request is for the property to by zoned C-1 and SU area being requested for SU would be
318 donated to ESCAFCA for use to build a pond on the site for flood control. One of your conditions from
319 the last time we came before you was to obtain a letter from NMDOT to confirm access to the property via
320 the frontage road which has been confirmed by a letter from the NMDOT District 3 Engineer Tim Parker.
321 A vicinity and site map illustrating the existing condition of the property and proposed phases of
322 development. A letter to ESCAFCA confirming Fisher’s intent to donate a portion of the Property to
323 ESCAFCA for drainage. Water and Sew Availability Study, including a water budget, prepared by Wilson
324 and Company. Fisher Sand and Gravel has provided all the documentation and information in reference
325 to the item that needed to be answered when it was tabled at the last public hearing.

326
327 The development is a planned development and will meet all the requirements of the Planning and Zoning
328 for the Town of Bernalillo. During the development of the property Fisher Sand and Gravel is requesting
329 to be allowed to mine the sand and gravel on the property for a profit.

330
331 Councilor Prairie asked what is the property currently being used for.

332
333 Matt Spangler stated that for the last three years it has been mined for sand and gravel.

334 Councilor Jaramillo asked Matt Spangler for a time line for this project.

335

336 Matt Spangler stated that they are willing to shorten the time of mining for sand and gravel to seven
337 years.

338

339 Councilor Prairie asked has there been any marketing of the property for future businesses for the site.

340

341 Matt Spangler stated there had not been any marketing of the site.

342

343 Councilor Montoya stated his concern is it a development or the extraction of sand and gravel so why
344 would we put a seven year period.

345

346 Matt Spangler state there is a significant resource here and to use that resource there and get it out of
347 there. We will make a commitment to get it done as soon as we can.

348

349 Councilor Montoya it has been stated you are a sand and gravel company why not get the profit my thought
350 is do you really want to develop it.

351

352 Matt Spangler stated our wish is to do both.

353

354 Mayor Torres stated under the right circumstance this could be the right development for the town. I am
355 worried that we are being asked to be annexed. You are saying grading but do you really mean mining and
356 I am little concerned. I think the Councilors and I are thinking the same I would like to know the
357 difference of grading to mining. Are we being asked to grant a mining operation and not a development.
358 If that is the purpose of this property to mine the gravel it is not a development.

359

360 Matt Spangler stated that in this case to get to the right elevation of the property. There is significant sand
361 and gravel to extract from the property.

362

363 Mayor Torres stated let me ask the question a different way. If there are three hills and I take them down
364 and end up at a certain grade. If you are grading there and hit gravel what happens there.

365

366 Matt Spangler stated you are correct that at that point a screen process would take place to take the gravel
367 out of the site.

368

369 Mayor Torres stated we are really looking at a gravel operation here and when that is done then we are
370 looking at a development.

371

372 Matt Spangler stated that is correct.

373

374 Mayor Torres in your estimates are you saying that within 7 years you would extract all the sand and gravel

375 from the property.

376

377 Matt Spangler explained the grading plan for the property

378

379 Mayor Torres stated what was explained was that 528,000 yards will be pulled out of the property. When
380 will the paving, sewer and water be placed in the development?

381

382 Matt Spangler stated within seven years.

383

384 Councilor Prairie stated do you have an idea what the Town would receive in gross receipts tax.

385

386 Matt Spangler stated that it would be within the range of \$400,000 for the seven years.

387

388 Mayor Torres asked Town Council what is the assurance we do not just end up with a hole in the ground.

389

390 Chris Perez Town Attorney stated that we would have to sit down with Matt Spangler to discuss the issues
391 and the fines and bond required for the development.

392

393 Mayor Torres if we approve this in the application no one would be able to mine in the C-1 area.

394

395 Chris Perez Town Attorney stated that it would fall within the M-1 as light industrial the ordinance is
396 silent.

397

398 Councilor Jaramillo asked if Larry Blair from ESCAFCA could comment on the pond to be built on the
399 property.

400

401 Larry Blair stated the pond would be on the south end of the property. It would be 45 acre feet capacity it
402 would be significant to the run off that comes off that area A 100 year event is 812 cubic feet of water. By
403 building the pond it would improve the situation. Last summer two floods came through there. This
404 would go a long way of solving that. This summer we had 300 feet per second coming out of that area.

405

406 Mayor Torres swore in those wishing to speak against the project.

407

408 The names of the individuals are not all individuals who spoke. The name of the individuals were Bob
409 Gorrell, Ed Majka, Chris Daul, Dick Ulmer, Lynn Koch, Orin Safier, David Olson, Ron Alfred, Shane
410 Mahoney Alan Friedman, Frances Manning, Steve Amiot Ralph Bonner, Orlando Lucero, Wayne
411 Armstrong, Jose Munos, Diane Combs-Munuz, Scott Stevens.

412

413 The Concerns of those that spoke were as follows;

414

- Impact on Gravel Pits on Residential Property Values

415

- Air Pollution from Dust

- 416 • Increased Traffic
- 417 • Violations in other communities Fisher Sand and Gravel has operated

418
419
420 Mayor Torres stated that if the development is done right it could be a good development for the Town.

421
422 Mayor Torres wanted to address the comment made about Sandia Pueblo they are welcomed to be here.
423 We have concerns right now that several of the pueblos have purchase private property and revert that land
424 to trust status. In some cases the Pueblo has taken the position that they have re-acquired pueblo land and
425 becomes trust land immediately. Once property becomes trust status it takes the property from the tax rolls
426 and under and jurisdiction of the Town and the County.

427
428 Mayor Torres entertained a motion to table the request of Fisher Sand and Gravel and allow staff to work
429 on the item before us and discuss the issues brought up this evening.

430
431 Councilor Jaramillo moved to table annexation and zoning designation of Fisher Sand and Gravel. The
432 Motion was seconded by Councilor Sisneros.

433
434 Roll Call
435 Councilor Prairie Yea
436 Councilor Sisneros Yea
437 Councilor Montoya Yea
438 Councilor Jaramillo Yea

439
440

441 **PUBLIC HEARING: 6a) Discussion, Consideration and Action on Adoption of**
442 **Ordinance #276 An Ordinance Amending Ordinance #253 Relation to Compensation for**
443 **Members of the Governing Body and Municipal Judge for the Town of Bernalillo.**

444 **Presenter: Ida Fierro**

445 STATE OF NEW MEXICO

TOWN OF BERNALILLO

446
447

448 ORDINANCE NO. 276

449

450 AN ORDINANCE AMENDING ORDINANCE NO. 254
451 RELATING TO COMPENSATION FOR MEMBERS OF THE GOVERNING BODY
452 AND MUNICIPAL JUDGE OF THE TOWN OF BERNALILLO

453

454 BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERNALILLO,
455 NEW MEXICO.

456

- 457 1. Governing Body: The Governing body of the Town of Bernalillo shall consist of the
458 Mayor and four at-large Trustees. The governing body shall be vested all corporate
459 authority of the Town.
460
- 461 2. Compensation: The compensation for the Mayor, Board of Trustees and Municipal
462 Judge for their terms commencing on or after March 4, 2014, shall be as follows:
463
- 464 A. The Mayor. The Mayor shall be compensated for attendance at each regular
465 meeting of the governing body of the Town of Bernalillo at the rate of Twelve
466 Hundred Dollars (\$1,200.00) per month: and, shall be compensated for attendance
467 at each special meeting of the governing body or meeting requiring representation
468 of the municipality of the Town of Bernalillo at the rate of One Hundred Fifty
469 Dollars (\$150.00) per meeting.
470
- 471 B. Board of Trustees. Members of the Board of Trustees shall be compensated for
472 attendance at each regular meeting of the governing body of the Town of
473 Bernalillo at the rate of Six Hundred Dollars (\$600.00) per month; and, they shall
474 be compensated for attendance at each special meeting of the governing body or
475 meeting requiring representation of the municipality of the Town of Bernalillo at
476 the request of the mayor at the rate of Seventy Five Dollars (\$75.00) per meeting.
477
- 478 C. Municipal Judge. The Municipal Judge shall be paid Seven Hundred and Fifty
479 Dollars (\$750.00) per month.
480
- 481 3. Repeal: All ordinances or parts of ordinance in conflict herewith are hereby repealed.
482
- 483 4. Severability: Should any section, subsection, paragraph or part hereof be declared
484 unconstitutional or invalid, the same shall not invalidate any other part or portion of
485 this ordinance, it being the intent of the Board of Trustees to enact each section,
486 subsection, paragraph and part thereof independently of every other part.
487

488 PASSED, APPROVED AND ADOPTED THIS 24nd DAY OF February 2014..

489 Mayor Torres entertained a motion.

491
492 Councilor Jaramillo made a motion to adopt Ordinance #276 An Ordinance Amending
493 Ordinance # 253 relation to Compensation for Members of the Governing Body and Municipal
494 Judge for the Town of Bernalillo. The motion was seconded by Councilor Sisneros.

495
496
497 Roll Call Vote

498 Councilor Prairie Yea
499 Councilor Sisneros Yea
500 Councilor Montoya Yea
501 Councilor Jaramillo Yea

502
503 **APPROVAL OF MINUTES: 5a) Regular Meeting of February 10, 2014**

504 Councilor Montoya moved to approve the minutes of February 10, 2014 as presented. The
505 motion was seconded by Councilor Prairie and the motion carried unanimously.

506
507 **NEW BUSINESS: 9a) Discussion Consideration, Action and Approval of**
508 **Memorandum of Understanding Between the Town of Bernalillo ant the Middle Rio**
509 **Council of Governments. Presenter: Maria Rinaldi**

510 **MEMORANDUM OF UNDERSTANDING**
511 **BETWEEN THE**
512 **TOWN OF BERNALILLO**
513 **AND THE**
514 **MID REGION COUNCIL OF**
515 **GOVERNMENTS**

516
517 This Agreement, hereinafter referred to as "MOU" is entered into on 24th day of
518 March, 2014 between the Mid Region Council of Governments ("MRCOG") a regional
519 planning organization of the State of New Mexico and the Town of Bernalillo ("Town"),
520 collectively referred to as the "Parties".

521
522 **RECITALS**

523
524 **WHEREAS**, MRCOG was established pursuant to the Regional Planning Act, Sections 3-
525 56-1 NMSA 1978, et seq. and is the regional council of state planning and development district
526 number 3 as provided in the Planning District Act, Sections 4-58-1 NMSA 1978, et seq. and is a
527 local public body as defined in Article 6, Local Government Finances Section 6-6-1 NMSA
528 1978; and;

529
530 **WHEREAS**, the Town is a member of MRCOG; and;

531
532 **WHERAS**, in reference to the Laws of 2013, \$335,000.00 dollars were appropriated to the
533 Local Government Division for Town of Bernalillo Projects: #13-1755, #13-1756. The
534 appropriations are for funding for the Barrier/Fencing/Trail Crossing Project and improvements to
535 the Coronado Little League Improvement Project (hereinafter "Project"); and;

536
537 **WHEREAS**, Executive Order 2013-006 issued May 2, 2013 provides that a grantee for

538 appropriations may not receive such funds if its audit does not meet certain requirements unless
539 such funds are received by another appropriate entity acting as a fiscal agent; and;

540

541 **WHEREAS**, the Town requires assistance from a qualified local body to serve as fiscal
542 agent to receive the legislative appropriations for the Project; and;

543

544 **WHEREAS**, the Town requires oversight with any and all contracts issued pursuant to any
545 Request for Proposals or Invitation for Bids for the Project; and;

546

547 **WHEREAS**, MRCOG has the necessary expertise, staff and experience to serve as the
548 fiscal agent to the Town and to oversee the Procurement Process including issuance of contracts and
549 payment for services for the Project; and;

550

551 **WHEREAS**, the Town has requested that MRCOG serve as the fiscal agent and oversee the
552 procurement process, issuance of any contracts and process payment for services for the Project.

553

554 **NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES**
555 **AND REPRESENTATIONS IN THIS MOU, THE PARTIES AGREE AS FOLLOWS:**

556

557 **Section 1. DUTIES.**

558

559 A. MRCOG:

560

561 MRCOG will provide the following administrative services for the Project.

562

563 1. MRCOG will provide oversight to the Town in preparing the request for bids or RFP in
564 accordance with the NM Procurement Code, NMSA 13-1-1 et. seq.

565

566 2. MRCOG shall appoint a staff liaison to coordinate with the purchasing agent designated
567 by the Town to oversee the procurement process and administration of any contracts
568 awarded for the Project.

569

570 3. The MRCOG procurement manager will approve invoices associated with the Project.

571

572 4. All funds appropriated by the Legislature for the aforementioned purpose shall
573 be received by MRCOG from the Department of Finance and Administration Local
574 Government Division or respective state agency and be distributed by MRCOG as
575 appropriate pursuant all applicable law on the Town's behalf.

576

577 5. MRCOG shall ensure that grant funds are expended in compliance with all applicable
578 laws, regulations and grant agreement and the transactions are appropriately accounted
579 for in compliance with such laws, regulations and grant agreement.

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6. MRCOG shall ensure safeguarding of grant funds and assets acquired with grant funds and proper accounting thereof in compliance with applicable laws, regulations and grant agreement.
 7. MRCOG will charge the Town for direct labor costs that are associated with oversight of the Projects. **In no event shall the administrative fee be paid from the appropriations authorized by the Local Government Division of the Department of Finance and Administration and funded by the NM Legislature from Severance tax bond proceeds. The administrative fee shall be paid by the Town out of Town Funds.**
- B. Town:
1. The Town will prepare and manage the request for bids or RFP (as required by procurement code) for all equipment purchases, design documents and the necessary information to issue a request for proposals or invitation to bid for the Project.
 2. Upon completion of the Project, all equipment purchased and built infrastructure, to include improvements, shall be the property of the Town and will be placed on the Town's inventory.
 3. The Town will designate a purchasing agent to oversee the issuance of the request for bids or RFP, manage the procurement process and administer any and all contracts issued for the Project. The purchasing agent will work in conjunction with the procurement manager provided by MRCOG.
 4. The Town shall pay MRCOG for direct labor costs associated with oversight of the Projects. **In no event shall the administrative fee be paid from the appropriations authorized by the Local Government Division of the Department of Finance and Administration and funded by the NM Legislature from Severance tax bond proceeds. The administrative fee shall be paid by the Town out of Town Funds.**

Section 2. COMPENSATION AND METHOD OF PAYMENT. The Town shall pay MRCOG an amount equal to the direct labor costs associated with oversight of the Projects. Payment shall be made on a payment schedule to be negotiated by the Parties, with final payment to be received upon completion of the Project.

Section 3. TERM. This agreement shall be from the date of approval to June 30, 2018, and may be renewed or terminated upon the written agreement of both parties.

622 **Section 4. TERMINATION.** Either party may terminate this MOU upon 30 days written
623 notice. Such early termination shall not nullify obligations incurred for performance or failure to
624 perform prior to termination.

625

626 **Section 5. AMENDMENT.** This MOU may be amended at any time by mutual agreement of
627 the parties. Any amendment shall be in writing and executed by the Parties.

628

629 **Section 6. COMPLIANCE WITH LAWS.** In performing the disposition of Property
630 pursuant to this MOU, the Parties shall comply with the laws of the State of New Mexico, the
631 policies of the Town and the policies of the MRCOG.

632

633 **Section 7. STATUS.** MRCOG, its employees and agents performing the services pursuant to
634 this MOU are not employees of the Town. The MRCOG and its agents and employees shall not
635 accrue leave, retirement, insurance, bonding, use of Town vehicles, or any other benefits afforded
636 to employees of the Town.

637

638 **Section 8. ASSIGNMENT.** The MRCOG shall not assign or transfer any interest in this
639 agreement or assign any claims for money due or to become due under this agreement without
640 the prior written approval of both Parties.

641

642 **Section 9. SUBCONTRACTING.** The MRCOG may not subcontract portions of the
643 services to be performed under this agreement without the prior written approval of the Town.

644

645 **Section 10. APPROPRIATIONS.** The terms of this MOU are contingent upon sufficient
646 funds being made available by the Legislature of the State of New Mexico for the
647 performance of this agreement. If sufficient funds are not made available, this MOU shall
648 terminate. Termination pursuant to this section shall be effective upon written notice being
649 given by the
650 Town to MRCOG.

651

652 **Section 11. RELEASE.** The MRCOG, upon final payment of all amounts due under
653 this MOU, shall release the Town, its officers and employees from all liabilities, claims
654 and obligations whatsoever arising from or under this MOU.

655

656 **Section 12. LIABILITY.** Each Party shall be solely responsible for its own actions and for
657 the actions of its employees, officers or agents under this MOU. Nothing herein shall be deemed
658 to waive any and all limitations on liability and other protections under the New Mexico
659 Tort Claims Act. All of the privileges and immunities from liability, exemptions from
660 laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other
661 benefits which apply to the activity of officers, agents or employees of any Party when

662 performing their respective functions within the territorial limits of their respective public
663 agencies, shall apply to them to the same extent while engaged in the performance of their
664 functions and duties extraterritorially under the provisions of this MOU.

665
666 **Section 13. SCOPE OF AGREEMENT.** This MOU incorporates all the agreements and
667 understandings between the Parties concerning its subject matter, and all agreements and
668 understandings have been merged into this MOU. No prior or contemporaneous agreement or
669 understanding, verbal or otherwise, of the parties or their agents concerning the subject matter of
670 this MOU is valid or enforceable unless included in this MOU

671
672 Mayor Torres entertained a motion

673
674 Councilor Jaramillo made a motion to approve the Memorandum of Understanding Between The
675 Town of Bernalillo and the Middle Rio Council of Governments. The motion was seconded by
676 Councilor Prairie and the motion carried unanimously.

677
678 **NEW BUSINESS: 9b) Discussion Consideration and Action on Approval of Town**
679 **of Bernalillo Audits 2011, 2012, and 2013.. Presenter: Juan Torres**

680 Heinfeld, Meech & Company, Co., P.C. reviewed the Audit from 2011, 2012 and 2013. The
681 Auditor stated that the issue with all subsequent years is the finding that have reoccurred form
682 2006. Which is why there is a disclaimer of opinion on all the audits.

683
684 The Auditor stated that staff has made significant strides in clearing up some of the finding and
685 commend that staff for their help and hard work.

686
687 Mayor Torres stated that the finding cannot be removed until the State Treasurer and Department
688 of Local Government agree on the plan to clean up the fund balances. The Town's bank
689 statements are balanced monthly and we know how much money we have in the bank. We have
690 control of our finances and you can be assured of that. We have made changes and following
691 procurement. Some finding will go away but it will take some time to clean these up.

692
693 Councilor Jaramillo stated the Council could step up and help to develop policies.

694
695 Mayor Torres entertained a motion.

696
697 Councilor Jaramillo made a motion to approve Audits 2011, 2012, and 2013 for the Town of
698 Bernalillo. The motion was seconded by Councilor Montoya and the motion carried
699 unanimously.

700
701 **FINANCIAL SECTION:10a) Approval of Accounts Payable Voucher List.**
702 Mayor Torres asked for a motion to approve the accounts payable voucher list in the amount of

703 \$340,705.99.

704

705 Councilor Sisneros made a motion to approve the accounts payable voucher list in the amount of
706 \$340,705.99. The motion was seconded by Councilor Montoya and the motion carried
707 unanimously.

708

709 **MISCELLANEOUS SECTION:11a) Public Comment.**

710 None.

711

712 **MISCELLANEOUS SECTION: 11b) End of Month Financials. Presenter: Juan**
713 **Torres**

714 Juan Torres presented a General Fund Summary Report to the Governing Body. The expense
715 summary report has current budget, current period, YTD actual, YTD encumbrance, budget
716 balance, and percent of budget. There is also a Revenue Summary with the same information.
717 The report will assist the Governing Body with the information on each department's financial
718 status. The report will be given to the Governing Body monthly for all funds.

719

720 **MISCELLANEOUS SECTION: 11c) Announcements. Presenter: Mayor Torres**

721 Mayor Torres made the following announcements;

722

723 Mayor Torres stated that the Town has possibly received \$600,000 from the Legislature that
724 needs to be approved by the Governor.

725

726 There being no further business, Councilor Sisneros moved to adjourn the meeting at
727 9:45 P.M. The motion was seconded by Councilor Montoya and carried unanimously.

728

729

730 Done this 24th day of February 2014.

731

732

733 ATTEST:

734

735 _____
736 Ida Fierro, Town Clerk
(seal)

Jack S. Torres, Mayor