

RESOLUTION NO. 2012-1450

PERTAINING TO ISSUANCE OF POLLUTION CONTROL REVENUE REFUNDING BONDS, 2012 SERIES (PUBLIC SERVICE COMPANY OF NEW MEXICO SAN JUAN PROJECT), INCLUDING ESTABLISHING THE PRINCIPAL AMOUNT THEREOF AND SPECIFYING CERTAIN MATTERS WITH RESPECT THERETO, AUTHORIZING THEIR SALE, AUTHORIZING EXECUTION AND DELIVERY OF CERTAIN INSTRUMENTS IN CONNECTION THEREWITH AND RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY

WHEREAS, the City Council of the City of Farmington, New Mexico (the "City") pursuant to Ordinance No. 2007-1183 adopted on May 22, 2007, and Resolution No. 2007-1239, adopted on June 12, 2007, and, the Pollution Control Revenue Bond Act, Chapter 397, Laws of 1973 of the State of New Mexico, 31st Legislature, 1st Session (as presently amended, the "Act") issued \$20,000,000 aggregate principal amount of its "Pollution Control Revenue Bonds 2007 Series (Public Service Company of New Mexico San Juan), (the "2007 Bonds") to finance the cost to Public Service Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico (the "Company") of certain Facilities (the "Facilities") for the abatement, control, reduction or prevention of pollution caused by solid waste disposal at Units 1, 2, 3 and 4 ("Units 1, 2, 3 and 4") at the San Juan Generating Station, electric power generating plant (the "Plant") located in San Juan County, New Mexico; and

WHEREAS, Ordinance No. 2012-1258 (the "Ordinance") creating and authorizing the issuance of the City's Pollution Control Revenue Refunding Bonds 2012 Series (Public Service Company of New Mexico San Juan Project)" (the "Bonds" or Series 2012 Bonds)" was duly adopted and approved on September 11, 2012; and

WHEREAS, on August 26, 2012, a Notice of Intent to Adopt of the Ordinance was published by title and a general summary of the subject matter of the Ordinance creating and authorizing the issuance of an issue of Bonds in the Daily Times; and

WHEREAS, U.S. Bank National Association (the "Purchaser") has submitted to the City a Bond Purchase Agreement dated September 11, 2012 (the "Bond Purchase Agreement") to purchase the Bonds authorized to be issued under the Ordinance, as such Ordinance may be supplemented by this Resolution, in reliance upon a Representation and Covenant Agreement from the Company and addressed to the City and Purchaser; and

WHEREAS, pursuant to the provisions of Section 147(f) of the Code, issuance of private activity bonds, such as the Bonds, must be approved by each governmental unit having jurisdiction over the location of any facility, with respect to which financing is to be provided therefrom, after a public hearing following reasonable public notice; and

WHEREAS, pursuant to Resolution No. 2012-1446, adopted by the City Council on August 14, 2012 the City did authorize publication of a notice of public hearing concerning the proposed issuance of the Bonds to refund the 2007 Bonds and to refinance the project funded by the 2007 Bonds (the "Bonds"); and

WHEREAS, on August 22, 2012, there was published in The Daily Times, a newspaper of general circulation within the City and the County, a notice (the "Public Notice") of public hearing of the City and the County with respect to the plan of financing and the proposed issuance of the Bonds; and

WHEREAS, on September 6, 2012, a public hearing on behalf of the City and the County was conducted by the City Attorney pursuant to the Public Notice at which interested persons were permitted to express their views on providing financing of the Facilities; and

WHEREAS, this City Council is the governing board of the City and has been advised that it constitutes an "applicable elected representative" of a governmental unit having jurisdiction over the Facilities for purposes of Section 147 of the Code; and

WHEREAS, there have been prepared and submitted to the City:

(a) a proposed Bond Purchase Agreement, including but not limited to the form of an investment letter from the Purchaser in the form of Exhibit A hereto;

(b) a proposed Amended and Restated Installment Sale Agreement (the "Installment Sale Agreement"), dated as of September 1, 2012 (amending and restating the Installment Sale Agreement dated as of June 1, 2007), between the City, as Vendor, and the Company, as Vendee in the form of Exhibit B hereto;

(c) a proposed Representation and Covenant Agreement in the form of Exhibit C hereto;

(d) a form of proposed Guaranty of the Company relating to the Bonds from the Company to the Trustee for the Bonds, in the form of Exhibit D hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FARMINGTON, NEW MEXICO:

Section 1. Pursuant to Section 2.01 of the Ordinance, the Bonds are hereby authorized to be issued in an aggregate principal amount of \$20,000,000 and shall be dated with their original date of issuance. The Maturity Date of the Bonds is September 1, 2042. The Bonds shall initially be issued in the Multiannual Mode during the Initial Rate Period. The Bonds shall bear interest during the Initial Rate Period at the rate of 2.54% per annum. Except as defined herein, capitalized terms shall have the meaning ascribed to them in the Ordinance, as supplemented and amended.

Section 2. It is hereby found and determined that the amount necessary in each year to pay the interest on and the principal of the Bonds is the portion of Purchase Price of the Facilities in each such year and interest thereon required to be paid by the Company by Section 5.02(a) of the Installment Sale Agreement, until maturity or redemption in accordance with the terms and conditions of the Ordinance and more specifically, assuming that the Bonds bear interest during the Initial Rate Period at 2.54% per annum and assuming that the Bonds bear interest at the maximum rate of 12% per annum thereafter until the Maturity Date, as set forth below. Interest on the Bonds during the Initial Rate Period shall be payable June 1 and December 1 commencing December 1, 2012.

<u>Annual Period</u>	<u>Interest for Each Annual Period</u>	<u>Principal to Be Retired in Such Period</u>	<u>Annual Debt Service Requirement</u>
2012	\$153,811	\$0	\$153,811
2013 through 2016, inclusive	\$508,000	\$0	\$508,000
2017	\$1,611,667	\$0	\$1,611,667
2018 through 2041	\$2,400,000	\$0	\$2,400,000
2042	\$1,600,000	\$20,000,000	\$21,600,000

Section 3. It is hereby determined that the Bonds shall be authenticated and delivered to the Owners on original issuance on September 27, 2012, or such other date as the Mayor of the City, the Company and the Purchaser shall mutually agree upon.

Section 4. During any Multiannual Interest Rate Period greater than 10 years, the Bonds shall be subject to redemption prior to maturity after 10 years from the commencement of such Multiannual Interest Rate Period at 100% of principal amount of the Bonds to be redeemed at the option of the Company.

Section 5. The Bond Purchase Agreement (the "Bond Purchase Agreement"), as submitted to this meeting and attached hereto as Exhibit A and made a part of this Resolution as though set forth in full herein, is hereby approved. The Bonds are to be sold to the Purchaser at a purchase price of 100% of the principal amount thereof (an aggregate of

\$20,000,000) on the terms and conditions set forth in the Bond Purchase Agreement, and the Mayor or in his absence, the Mayor Pro-Tem of the City is hereby authorized and directed to execute the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by him, such execution being conclusive evidence of such approval, and to deliver the same to the Purchaser. The City understands that the Purchaser shall receive payment from the Company of the underwriting commission pursuant to the terms of the Bond Purchase Agreement.

Section 6. The Installment Sale Agreement, as submitted to this meeting and attached hereto as Exhibit B, and made a part of this Resolution as though set forth in full herein, is hereby approved, and the Mayor or in his absence, the Mayor Pro-Tem of the City is hereby authorized and directed to execute and deliver the Installment Sale Agreement with such changes, insertions and omissions as may be approved by him, such execution being conclusive evidence of such approval, and to deliver the same to the Company, and the City Clerk is hereby authorized to affix the corporate seal thereto and attest to said execution by the Mayor or Mayor Pro-Tem.

Section 7. The Representation and Covenant Agreement from the Company and addressed to the City, as submitted to this meeting and attached hereto as Exhibit C and made a part of this Resolution as though set forth in full herein, and the Mayor or in his absence, the Mayor Pro-Tem of the City is hereby authorized and directed to execute and deliver such Representation and Covenant Agreement with such changes, insertions and omissions as may be approved by him, such execution being conclusive evidence of such approval, and to deliver the same to the Company and the Purchaser.

Section 8. All action taken by City officials in connection with the notice by publication which was published in The Daily Times on August 26, 2012 which notice set forth the title and general subject matter of the Ordinance as proposed, is hereby approved, ratified and confirmed.

Section 9. The appointment of Jay Burnham, City Attorney, hearing officer and the conduct of the public hearing on September 6, 2012, regarding the plan of financing and the issuance of the Bonds, is hereby ratified and approved; and the plan of financing and the issuance of the Bonds to refinance the Facilities is hereby approved, and such approval shall constitute such approval as is requires by Section 147(f) of the Code.

Section 10. The Bank of Albuquerque, N.A., the principal corporate trust office of which is located in Albuquerque, New Mexico, is hereby designated and appointed Trustee. Except as otherwise provided in the Ordinance, all notices, certificates, requests or other communications by the City or the Company shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed to the Trustee, Paying Agent, or Registrar, as applicable, as follows:

Bank of Albuquerque
201 Third Street NW
Suite 1400
Albuquerque, New Mexico
Attention: Corporate Trust Services

PASSED, ADOPTED, SIGNED AND APPROVED this 11th day of September, 2012.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk