Work Session of the City Council, City of Farmington, New Mexico, held Tuesday, April 2, 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

CITY ATTORNEY Jay B. Burnham

CITY CLERK Dianne Fuhrman

DEPUTY CITY CLERK Melody Coyner

PRESENTATION/HUMANE SOCIETY OF THE FOUR CORNERS AWARD

The Mayor presented Parks, Recreation and Cultural Affairs Director Cory Styron; Animal Shelter Consultant Marcy Eckhardt; and Chairperson of the Animal Services Advisory Commission Molly Bondow with a plaque from the Humane Society of the Four Corners in recognition their efforts and outstanding determination to make things better for the animals' welfare at the Farmington Animal Shelter.

SEXUAL ASSAULT AWARENESS MONTH PROCLAMATION

The Mayor presented Heather DePeal, Education & Outreach Coordinator for Sexual Assault Services of Northwest New Mexico, and Michael Patch, Development Manager for the Family Crisis Center, with a Proclamation declaring April 2013 as "Sexual Assault Awareness Month."

Ms. DePeal announced that the 8^{th} Annual Take Back the Night March on Main and Candlelight Vigil and the 3^{rd} Annual SASSY Tortoise and Hare Run will be held on April 25 and 27, 2013, respectively.

CRIME VICTIMS' RIGHTS WEEK PROCLAMATION

The Mayor presented Farmington Police Department Victims' Advocate Georgette Allen with a Proclamation declaring April 21 through 27, 2013 as "Crime Victims' Rights Week."

 $\,$ Ms. Allen announced that National Crime Victims' Rights Week is celebrated nationwide to recognize victims of all crimes.

FARMINGTON CONVENTION AND VISITORS BUREAU/PLAN TO RECOUP EMBEZZLED FUNDS FROM THE ESTATE OF DEBBIE DUSENBERY

Farmington Convention and Visitors Bureau ("FCVB") Executive Director Tonya Stinson introduced attorney Dick Gerding who represents the FCVB in its attempt to recoup embezzled funds from the estate of Debbie Dusenbery, the former FCVB Executive Director.

Mr. Gerding announced that an estate was established for Ms. Dusenbery and that Larry Thrower was appointed personal representative. He stated that suit was brought against the estate and that a \$488,000 judgment was obtained and that a transcript of judgment was filed with the San Juan County Clerk to place a lien on any funds from the sale of real property. He reported that Mr. Thrower has worked with the Farmington Police Department to secure money in the checking and savings accounts and to obtain possession of a Jeep Cherokee and fifth-wheel travel trailer owned by Ms. Dusenbery. He noted that the FCVB paid a

portion of the premiums on a group life insurance policy naming Ms. Dusenbery's ex-husband as the beneficiary but that, following their divorce, the FCVB became the legal beneficiary. He stated that a claim was filed for the \$100,000 insurance proceeds and learned that Ms. Dusenbery named Becky Walling (the Executive Director of the FCVB prior to Ms. Dusenbery) as the beneficiary shortly before her death and provided written instruction to her in an "illegal will" to use the insurance proceeds to repay the embezzled funds. He further stated that Ms. Walling refused to follow Ms. Dusenbery's instruction and that suit was filed in federal court. However, he pointed out that, pursuant to New Mexico law, no funds from insurance proceeds paid to a beneficiary can be attached or used by a creditor of either the recipient or the insured and announced that it was decided that continued efforts to obtain the insurance proceeds would be futile. He noted that Ms. Dusenbery had another \$100,000 insurance policy but that, because of potential litigation of the matter, he chose not to discuss it at this time. In closing, he stated that the FCVB will receive \$30,000 to \$35,000 from the sale of Ms. Dusenbery's house which is scheduled to close today; the remaining funds in the checking and savings accounts; and the proceeds from the sale of the Jeep and travel trailer, minus liens and expenses.

In response to Mayor Roberts, Mr. Gerding stated that the FCVB could recoup approximately \$60,000\$ after expenses.

Following discussion regarding the people who may have benefited from the embezzled funds, Mayor Roberts proposed that the FCVB consider contacting those individuals and, without asserting responsibility, ask if they would consider a donation to the FCVB in the amount they benefited from. Mr. Gerding stated that he would be happy to draft a letter for the FCVB to send to those individuals. Councilor Sandel echoed the Mayor's proposal and suggested that the Council direct the City's representative to the FCVB board to present the proposal for the board's consideration.

In response to inquiries from Councilor Fischer, Mr. Gerding stated that any use of Lodgers' Tax money must be beneficial to the public and that it is not possible to seek reimbursement of the \$50,000 drawn on the FCVB line-of-credit while Ms. Walling was Executive Director.

Following discussion, Councilor Sandel suggested that the Council consider requesting that the \$100,000 insurance proceeds received by Ms. Walling be donated to the FCVB. Mr. Gerding stated that he would be happy to assist in the drafting of a letter for the City Manager's review and signature.

Referring to a handwritten note on a Solga and Jakino audit/investigation document regarding two new credit cards with significant overdrafts and transfers from the line-of-credit prior to Ms. Dusenbery's promotion to Executive Director, Councilor Sandel questioned whether "we chased that rabbit" separate from the Dusenbery investigation. In response, Mr. Gerding noted that the entire criminal matter has been closed. Councilor Sandel contended that further investigation is necessary to find out the truth about the operation of the FCVB prior to Ms. Dusenbery's promotion to Executive Director.

Following discussion, it was the consensus of the Council to 1) direct the City's representative on the FCVB board to present and "bring to a vote" the proposal that they contact the people who benefited from the embezzled funds and ask if they would consider a donation to the FCVB in the amount they benefited from; 2) direct staff to contact Ms. Walling and ask if she would consider donating the \$100,000 insurance proceeds to the FCVB; and 3) contact Solga and Jakino and ask them to explain their statement regarding "two new credit cards with significant overdrafts and transfers from the line-of-credit" and identify what would be necessary to provide further explanation about the operation of the FCVB prior to Ms. Dusenbery's promotion to Executive Director.

Responding to Councilor Fischer, Mr. Gerding stated that it does not appear that any State funds received by the FCVB were used for fraudulent purposes.

Citing recent embezzlements in the public and private sector, Mr. Gerding recommended that the City require directors' and officers' ("D&O") insurance coverage for advisory board members with access to significant funds and periodic audits of all boards and organizations

that receive City funding. Councilor McCulloch expressed support for his recommendation.

2014 REGULAR MUNICIPAL ELECTION

Noting that Section 2-2-35 of the City Code requires each election district to have not less than one polling place, City Clerk Dianne Fuhrman proposed that Voting Convenience Centers ("VCCs") for the March 4, 2014 Regular Municipal Election be located at Gateway Park (District 1); City Hall (District 2); Farmington Public Library (District 3); and Piñon Hills Community Church (District 4). She pointed out that if the Council chooses to have more than one VCC per district, it will be necessary to increase the proposed FY 2014 budget from \$38,000. She asked for direction from the Council.

Mayor Roberts expressed a desire to have a VCC at Sycamore Park Community Center ("SPCC"). Furthermore, he contended that Piñon Hills Community Church is too far west in District 4 and suggested that a more central location be considered.

Councilor Sandel expressed support for a VCC at SPCC and a desire for more than one VCC location in District 4. He suggested that staff consider Farmington High School ("FHS"), Piedra Vista High School ("PVHS") and somewhere near Animas Valley Mall.

Ms. Fuhrman stated that a VCC at SPCC can be added without increasing the budget but that another location in District 4 will require an additional \$6100. She further stated that the proposed locations are consistent with those used by the San Juan County Clerk and pointed out that room availability and parking may be an issue at FHS and PVHS.

Councilor Darnell expressed a desire for municipal polling locations to be consistent with those used by the San Juan County Clerk.

Following discussion, it was the consensus of the Council to add a VCC at SPCC and a second location in District 4 in the northeast part of the city.

Councilor Sandel reiterated his desire that FHS and PVHS be considered as potential locations.

Following brief discussion, it was the consensus of the Council to direct staff to provide the Council with information on all-mail ballot elections.

REAPPOINTMENTS TO THE COMMUNITY RELATIONS COMMISSION

Mayor Roberts asked the Council's consideration of the reappointments of Beth Volkerding, David John, George Francis, Alfonso Garcia and Neil Johnson (terms to April, 2015) as members of the Community Relations Commission.

Following brief discussion regarding meeting attendance, a motion was made by Councilor McCulloch, seconded by Councilor Sandel to confirm the reappointments of Beth Volkerding, David John, George Francis, Alfonso Garcia and Neil Johnson as members of the Community Relations Commission, and upon voice vote the motion carried unanimously.

COUNCIL BUSINESS

Governing Body Rules of Procedure/Consensus

Mayor Roberts reminded the Council that action on amending the Governing Body Rules of Procedure ("Rules") concerning consensus items was tabled at the March 19, 2013 Work Session and directed the Council's attention to the proposed amendment contained in the agenda material.

Councilor Sandel stated that he and City Attorney Jay Burnham met and drafted the proposed amendment to the Rules to require 1) a Councilor request a consensus; 2) the membership be polled; 3) the Mayor makes a declaratory statement; 4) staff records the item on the consensus list and provides a copy to the Council within three days of the meeting; and 5) the Mayor and Council are notified when the action item is completed. In addition, he noted that the amendment provides that consensus will only be used to direct that staff take action that is within the

authority of staff without Council action; direct staff to move forward with something already authorized by previous Council action; or direct that an item requiring Council action be prepared and placed on a future Council meeting agenda for Council action at that time.

Thereupon, a motion was made by Councilor Sandel, seconded by Councilor Fischer to direct staff to draft a resolution to amend the Governing Body Rules of Procedure, as presented.

Discussion followed concerning whether a consensus rule adopted by the Council would be in violation of the Open Meetings Act in that it is an action item taken by the majority of the Council. Mr. Burnham stated that, in his opinion, the provisos regarding when consensus will be used clarify that consensus is not action taken by the Council.

Councilor Sandel noted that it was the consensus of a majority of the Council to direct staff to request an advisory opinion from the Attorney General concerning the validity of the Rules following adoption of the proposed amendments.

The Mayor called for the vote upon the motion to direct staff to draft a resolution amending the Governing Body Rules of Procedure concerning consensus, 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.

Discussion/Local Option Gross Receipts Tax increase

Noting that a gross receipts tax ("GRT") increase has been discussed as an option for increasing revenue as part of the budget information sessions/Community Input meetings, Councilor Sandel asked for Council guidance to staff on whether they support such a measure as part of the budget planning. He stated that he does not support a GRT increase.

Mayor Roberts noted that feedback at the Community Input meetings regarding a GRT increase was divided but helpful to get a sense of how the public feels about the issue. He stated that he considers a GRT increase as a last resort in formulating the FY14 budget and suggested that staff develop different budget scenarios that include deferring expenditures, using cash, cutting services and programs and a 1/4-percent GRT increase.

Contending that proceeds from a GRT increase would not significantly affect the FY14 budget, Councilor McCulloch asked that staff provide the Council with a timeline for a GRT referendum. In response, City Manager Rob Mayes stated that it would be necessary to use cash reserves even if the Council chooses a local option GRT increase. He pointed out that if the election were held in August 2013, the GRT increase would be implemented January 1, 2014 and that it would be 60 days before the City would receive the funds. Furthermore, he explained that if the referendum failed, it would be necessary to immediately implement budget cuts. He also noted that following recent economic developments, he anticipates an additional three to five percent drop in GRT which could increase the estimated budget deficit from \$4.4 to \$6.2 million. In addition, he pointed out that the Council has two discretionary 1/4-percent GRT increases available that do not require a referendum.

Responding to Mayor Roberts, Mr. Mayes stated that staff can provide "straw-man analysis" that will be helpful to the Council in formulating the FY14 budget.

Mayor Roberts expressed a desire that the public be made aware of the options for balancing the budget. He asked for Council consensus to direct staff to prepare budget scenarios and provide them to the Council within the next week.

Councilor Darnell expressed a desire to include electric, water and wastewater rates; program fees; and rents charged for use of City facilities in budget discussions. In addition, he expressed support for the Mayor's request for consensus.

Noting that she does not support a GRT increase, Councilor Fischer expressed a desire for the Council to emphasize controlled spending and asked for further explanation from State Representative Tom Taylor regarding his opinion that increasing GRT is not a viable option to increase revenue. In order to be more informed and prepared for budget discussions, she reiterated her previous request for a list of how many jobs will be impacted by the proposed cuts at the power plants and Navajo Mine; asked for information on how ConocoPhillips' decision to suspend drilling in the area will affect the community; and suggested that the Council meet with State representatives and elected officials of San Juan County, Aztec and Bloomfield regarding the impact of the repeal of the hold harmless agreement for cities as it pertains to gross receipts tax on the purchase of food and medical services ("hold harmless agreement").

Mayor Roberts reported that following a Community Input meeting, Mr. Taylor explained that, in his opinion, raising taxes worsens an already unsustainable tax structure and would support tax reform at the state level which promotes the idea of reducing the GRT tax rate to 2.5 percent statewide and increasing the tax base by eliminating existing deductions, exemptions, and credits. In addition, he noted that Mr. Taylor is very concerned about the negative impact that the repeal of the hold harmless agreement will have on cities.

Councilor McCulloch agreed with Councilor Sandel and Councilor Fischer in that she does not support raising taxes but understands that it needs to be considered as an option. She reiterated her contention that proceeds from a GRT increase would not significantly affect the FY14 budget.

Councilor Darnell stated that he does not support a discretionary (non-referendum) 1/4-percent GRT increase.

Following brief discussion, it was the consensus of a majority of the Council to direct staff to develop different budget scenarios that include deferring expenditures, using cash, cutting services and programs and a 1/4-percent GRT increase.

Email Communication with Councilor Fischer

Contending that Mayor Roberts has stated that he will only communicate with her through email and will not be providing printed copies, Councilor Fischer asked that the City Clerk provide her with hard copies of all emails that are sent to the attention of the council. She suggested that it is time that the Council put their differences aside and work together.

Referring to his March 29, 2013 email to Councilor Fischer, Mayor Roberts affirmed his commitment to her that he will treat her as he does all other Councilors with respect to communication (i.e. regular mail, telephone or email) and noted that his normal mode of communication with Councilors is email. In addition, he stated that he does not direct that hard copies of his email communications be placed in the inboxes of the other Councilors and has directed his Administrative staff to not put hard copies in her inbox unless he expressly directs them to on a case-by-case basis.

Expressing frustration, Councilor Fischer questioned whether the Mayor wants a fully-informed Council and stated that whatever method of communication he chooses is fine but that she should not be denied the information.

Mayor Roberts stated that he supports Councilor Fischer's right to communicate with him in any manner she chooses and argued that it is his decision on whether to receive the communication.

Councilor Fischer contended that she did not receive responses to a memo she sent to the Mayor, Council and City Manager asking for

information on the plan to staff the new animal shelter or to an Inspection of Public Records request asking for information on when employee meetings regarding the pay plan were held. She stated she does not understand the motivation for the email policy and contended that it will not make better government. She asked Councilors Darnell, McCulloch and Sandel to provide her with hard copies of emails sent to them by the Mayor. In addition, she expressed a desire for the Council to be proactive instead of reactive in addressing the economic issues currently facing the community.

In closing, Councilor Fischer expressed a desire to "put the gauntlet down", stating that she just wants to be a part of the governing body and believes that she has ideas to contribute.

CLOSED MEETING

A motion was made by Councilor Sandel, seconded by Councilor Darnell to close the meeting to discuss a limited personnel matter pursuant to Section 10-15-1H(2) NMSA 1978 (City Manager annual evaluation). 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.

The Mayor convened the closed meeting at 11:33 a.m. with all members of the Council being present.

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

The open meeting was reconvened by the Mayor at 12:07 p.m. with all members of the Council being present.

There being no further business to come before the Council, the meeting was adjourned at 12:08 p.m.

APPROVED this 23rd day of April, 2013.

	Tommy Roberts, Mayor
SEAL	
ATTEST:	
Dianne Fuhrman, City Clerk	