MINUTES OF THE

NEW MEXICO STATE BOARD OF FINANCE:

REGULAR MEETING

Santa Fe, New Mexico

February 18, 2014

A Regular Meeting of the New Mexico State Board of Finance was called to order on this date at 9:10 a.m. in the Governor’s Cabinet Room, Fourth Floor, State Capitol Building, Santa Fe, New Mexico.

1. ROLL CALL: QUORUM PRESENT

Members Present:
The Hon. John Sanchez, Lt. Governor [9:12 a.m. – 10:55 a.m.]
The Hon. James B. Lewis, State Treasurer
Mr. Robert J. Aragon, Public Member
Mr. Del Archuleta, Public Member
Mr. Michael Brasher, Public Member, Secretary
Mr. John Kormanik, Public Member

Members Excused:
The Hon. Susana Martinez, President

Staff Present:
Dr. Thomas E. Clifford, Secretary of Finance & Administration
Ms. Stephanie Schardin Clarke, Director, State Board of Finance
Mr. Jeff Primm, Deputy Director, State Board of Finance

Legal Counsel Present:
Mr. Luis Carrasco, Attorney General’s Office
Ms. Sally Malavé, Attorney General’s Office

Others Present:
[See sign-in sheets.]

2. APPROVAL OF AGENDA

ANNOUNCEMENT: NEXT REGULAR MEETING: TUESDAY, MARCH 18, 2014

Mr. Aragon moved for approval of the agenda, as published. Mr. Archuleta seconded the motion, which passed 5-0 by voice vote. [Lt. Governor Sanchez was not present during the vote.]
3. **APPROVAL OF MINUTES: January 22, 2014 (Regular Meeting)**

Mr. Primm stated that, subsequent to the board’s action on Item #11 during its January 22nd meeting [Facilities Management Division – Requests Approval of Acquisition of Real Property at 615 1st Street, N.W. in Albuquerque and Acceptance of Certain Special Exceptions ($1,770,000)] staff developed, in consultation with legal counsel, contingency language to effectuate the Board’s action. The contingency language that was developed and that he referred members to was as follows:

“Subject to Director’s receipt of written acknowledgement from the General Services Department and the Corrections Department that: 1) the difference between the successfully-negotiated purchase price and the appraised market value for the property is understood by the Board to represent a reserve that would provide financial assurance to the state to enable completion of environmental compliance activities on the property in the event that the Seller breaches its contractual agreements regarding ongoing environmental compliance activities and the Seller is unable to be compelled to remedy the breach, and 2) such reserve shall not be used for another purpose until all necessary environmental activities have been completed”

Mr. Primm said some verbiage in the minutes was also corrected to clarify the action taken on Staff Item #14 [Election of Secretary of the State Board of Finance]. Finally, the formatting of the signature block at the end of the minutes was also corrected.

Mr. Archuleta moved for approval of the January 22, 2014, minutes, as amended. Mr. Kormanik seconded the motion, which passed 5-0 by voice vote. [Lt. Governor Sanchez was not present for the vote.]

**EMERGENCY FUND BALANCES**
Presenter: Stephanie Schardin Clarke, Director

4. **Emergency Balances – February 2014**

Operating Reserve Fund $ 1,475,150.00

Emergency Water Fund $ 118,400.00

Ms. Clarke reported these balances.

**PROPERTY DISPOSITIONS**

5. Withdrawn

6. Withdrawn

7. Withdrawn
[Lt. Governor Sanchez joined the proceedings.]

Presenter: Subhas K. Shah, Chief Engineer, Chief Executive Officer; Adren Nance, Attorney; Socorro County Commissioner Phillip Anaya

8. **Middle Rio Grande Conservancy District – Requests Approval of Lease of Real Property, Escondida Lake Recreational Area, to Socorro County (in exchange for the County’s agreement to operate and maintain the area)**

Mr. Shah stated that the Middle Rio Grande Conservancy District is requesting approval to lease its 19.85 acre Escondida Lake Recreational Area to Socorro County. The County has leased the subject property for game, fish and other recreational purposes to benefit the people of the County since 1974. The proposed lease will allow this relationship to continue. The County will lease from the Conservancy for a term of 25 years, and in exchange the County will operate a public recreational area on the subject property. The County may extend the lease for another 25 years.

Ms. Clarke stated that the Conservancy District Board has approved the lease, after some minor changes were made, but a signed version of the minutes will be required.

**Ms. Clarke recommended that any approval of this request be contingent upon Director’s receipt of evidence of Conservancy District approval of the amended lease.**

Responding to Mr. Kormanik, Mr. Shah said the market value of the property has been determined to be $223,234 by the Socorro County Assessor.

Mr. Kormanik asked what the lease payment would have been had there been an actual lease payment made to the County, and Mr. Shah responded that he did not know, as the property has been for public use and no money has ever been charged to the County for that.

Mr. Kormanik asked what the annual maintenance costs would be for the property, and Mr. Anaya said he thought annual operational costs might be $45,000 to $55,000 or more.

Mr. Kormanik asked if the Conservancy would have to maintain the lake if it were not leased by the County. Mr. Anaya responded yes, “or else it would have to fall apart.” He said too much has been spent on the lake already. Around 1992 or 1994, improvements were made through a joint venture with a bosque task force and other agencies including the Bosque del Apache, BLM, New Mexico Tech, Bureau of Reclamation, Conservancy, County and city.

**Mr. Aragon moved for approval, with the contingency. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.**
Presenters: Elena Sweeney, Deputy Director, Museum of Indian Arts & Culture; Erin K. McSherry, General Counsel, New Mexico Department of Cultural Affairs

9. Department of Cultural Affairs – Requests Approval of Lease of Real Property at Museum Hill Café at the Museum of Indian Arts & Culture to Mr. Weldon Fulton, dba Café Society of New Mexico ($2,650 per month)

Ms. McSherry requested approval of this lease to Mr. Weldon Fulton, the existing tenant. She said the lease will have a five-year term, renewable for up to 10 additional one-year terms. Mr. Fulton’s existing lease at the café has the option to extend through 2015; however, the museum would like to enter into a new lease with Mr. Fulton for the October 31, 2013, appraised rental value of $2,650 per month. She said the current rental rate is $1,000 per month plus 5 percent of gross, minus tax and tips, which averages about $2,200 per month.

Ms. McSherry said the Department of Cultural Affairs would like to continue to work with Mr. Fulton, as his business has drawn many visitors to Museum Hill.

Ms. Clarke recommended that any approval be contingent upon 1) Director receipt of evidence that the lease has been approved by the Museum of New Mexico Board of Regents; and 2) Director receipt of evidence that the lease has been signed by all parties.

Mr. Archuleta moved for approval, with the two conditions. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.

Presenter: Gary I. J. Giron, Director, Finance and Operations

10. Bloomfield School District – Requests Approval to Lease Real Property to the U.S. Forest Service with Revised Contingencies ($70,088.20 per year)

Mr. Giron stated that, last month, the Board of Finance approved a lease of space between Bloomfield School District and the U.S. Forest Service (USFS) in the amount of $70,088.20 per year, or $9.10 per square foot. The lease was approved by the Board of Finance subject to four contingencies.

Mr. Giron said the process of negotiating the required amendments with the USFS to their contract template had been time-consuming and difficult, and that USFS declined to accept the fourth contingency having to do with the deletion of paragraph 2.11(A)(v). With the assistance of Board of Finance staff, a supplemental agreement containing language that addressed the concerns that gave rise to the Board’s original contingencies was negotiated with USFS.

Mr. Giron said the U.S. Forest Service has agreed to the changes in the supplemental agreement and the parties are ready to proceed with approval of the Board of Finance.

Mr. Primm suggested that, if the Board approves this item, it would be contingent upon Director’s receipt of final version of lease and supplemental agreement executed by the parties.

Mr. Archuleta moved for approval, with the contingency. Mr. Aragon seconded the motion, which passed 6-0 by voice vote.
11. University of New Mexico – Requests Approval of Acquisition of Real Property at 2130 Eubank Blvd, N.E. in Albuquerque and Acceptance of Certain Special Exceptions ($1,653,000)

Mr. Eccles stated that the University of New Mexico (UNM) is requesting approval to acquire real property located at 2130 Eubank Blvd., N.E., Albuquerque, at a cost of $1,653,000. The property was appraised at $1,710,000 in September 2013, and includes an assessed property tax value of $1,825,000. He said the property is the former Charter Bank administrative and branch bank building, which contains 22,815 square feet and is situated on a 2.5-acre site. The improvements were originally constructed in 1980 with renovations and expansions in 1989 and 2006. The property will be converted for use as a community-based clinical care facility, to be operated by UNM Hospitals. He said the sole funding source is UNMH's Health Sciences Center Capital Initiative Funds in the amount of $1.653 million.

Mr. Kormanik asked what the source of funding is for the capital initiative funds being utilized for the project, and also what the current balance is and what future expenditures and disbursements are expected to be from that source.

Dr. Roth responded that these funds are hospital funds that have accumulated over the last several years and have been set aside for capital projects. He said an information packet distributed to Board members at this meeting includes information on the current project and discussion about UNMH's strategy to expand their ambulatory programs. He said the funds are to benefit University of New Mexico Hospital, and the balance is currently about $70 million. He explained that as the hospital accumulates funds, "it has within its finances a depreciation methodology, and most often it actually funds that depreciation and it finds its way, at least in part, in these capital initiative balances."

Mr. McKernan said about $5.5 million of the $70 million will fund the North 4th Clinic. He said the Board approved the property acquisition at last month's meeting. He said the request before the Board today will also be an approximately $5.5 million expenditure.

Mr. McKernan stated that the hospital is an enterprise within UNM, and this is a real property purchase and development that is owned by the Board of Regents.

Mr. Kormanik said he feels uncomfortable approving a project without knowing the funding source.

Secretary Clifford observed that the informational materials state that roughly 20 percent, or roughly $130 million per year, of UNMH's expenses are uncompensated. He said he would like to see an audited analysis of those figures.
Mr. McKernan responded that this is included in their audit, which includes a note about uncompensated care.

Secretary Clifford asked if there is information about how those uncompensated expenses are met, and Mr. McKernan responded that UNMH does a breakdown of all of its uncompensated care, and that is provided to the Board of Regents. It is also presented quarterly to the Bernalillo County Commission and is also on the UNMH website. He said it is broken down by zip code, medical condition, and a variety of other ways. He said it is not broken down further than that because of potential HIPAA violations.

Secretary Clifford commented that this is a hole that the state or county is filling in the UNMH budget, so he wondered what the hospital’s due diligence requirements are to try to collect payment beyond reimbursements from the state and county.

Mr. McKernan responded that uncompensated care is composed of charity care/financial assistance and unpaid bad debts. He said there is a formal process and policy regarding charity care. An individual who is a resident of Bernalillo County (or is a state resident with an additional condition) with an income of less than 350 percent of the poverty guidelines, and has liquid assets of less than $10,000 not counting one’s house or pension plan, and cannot qualify for commercial insurance, Medicaid, Medicare, Indian Health Service or other assistance, then the person qualifies for charity care/financial assistance. He said the person must produce documentation and has to report if they become eligible for any other financial assistance. He said UNMH waits for a Medicaid denial notice before providing the financial assistance. He said that makes up about $100 million of the $130 million in the uncompensated care category.

Mr. McKernan stated that UNMH aggressively pursues patients who do not pay, using outside agencies to collect on unpaid balances. He said those practices are in accordance with the requirements in Medicaid law.

Mr. Brasher asked what the hours of operation will be at the proposed clinic location, and Mr. McKernan said they plan to open at 8:00 a.m. and close at 5:00 p.m. and are in discussions with neighborhood groups about extending that to Saturdays and evenings until 7:00 or 8:00 p.m.

Mr. Brasher asked that UNMH consider designing the waiting room at this facility in a way that makes patients as comfortable as possible.

Mr. Aragon asked if this clinic would dispense Suboxone and other types of medication for people currently addicted to drugs. He said this is a growing problem that is no longer restricted to one area of the city. He stated that these are people who are sick and need medical attention, yet they do not have ready access to the healthcare that they need. He said that 60-70 percent of people at the Metropolitan Detention Center have a serious addiction problem, and all of them regularly comment that it is difficult for them to get help.

Dr. Roth responded that all of UNMH’s primary care facilities have incorporated the ability to treat and manage addiction. He added that they are working with the county on ways to facilitate the transfer of residents from the jail directly back into the medical environment as well as to address the mental health needs of these people and their families.
Mr. Aragon commented that he looked forward to hearing UNM report back on its efforts with this and what progress has been made.

Mr. Archuleta asked UNMH to come forward at some point in the future with a report on how successful it has been in deflecting people away from visiting the emergency room because now they can get care through these community clinics.

Dr. Roth responded that this is part of their strategy – the reduction in the use of the emergency department is second to their major objective of providing healthcare to people when they need it. He said they are working closely with the Department of Health and other neighborhood groups around the state in developing the role of a community health worker to assist people who cannot get to the clinics for their medications and other needs. He said the community health workers would be able to check in on people door to door.

Dr. Roth noted that 20 percent of the population has chronic healthcare issues such as diabetes that uses 80 percent of healthcare services. To that end, UNMH instituted “Care One” about five years ago, a program that includes a team approach to managing healthcare, and they published papers to show that utilization of the emergency room and hospital admissions dropped dramatically among people in this population. He added that the demand for healthcare around New Mexico is so great that he was not sure it would be possible to track a decrease in emergency room visits overall, but tracking individuals who use their services is possible, and those individuals have dramatically decreased emergency room visits.

Mr. Archuleta asked that, when UNMH returns with its next report following the bid process, it provide a detailed breakdown of estimated costs versus actual costs.

Mr. Aragon asked what steps UNM has taken to test the soil for contaminants, and will the University be held harmless if contaminants are found. Mr. Neale responded that UNM routinely engages an environmental consultant to prepare a phase 1 environmental site assessment in all of its property acquisitions. He said UNM relies on its own analysis of any environmental conditions rather than representations or documents provided by the seller. He said the consultant looks at historical uses of the property going back decades, at surrounding properties to see if there are any reported environmental conditions, and if an additional environmental study is recommended, UNM follows up. He said no further study was recommended in this case.

Mr. Aragon asked Mr. Neale if he was satisfied that he would not be coming back to the Board six months from now to say there is a problem. Mr. Neale responded that he was satisfied.

Mr. Brasher noted that the documentation reflects that nearby properties had underground leaking storage tanks. Mr. Neale responded that the responsible parties have been identified, so the University would not be liable for those contaminants.

Mr. Aragon expressed concern that there could be migration of those contaminants onto the subject property. Mr. Neale responded that he feels UNM has done sufficient due diligence to mitigate any liability with respect to that issue.
Responding to Lt. Governor Sanchez, Mr. Neale said the phase 1 environmental assessment provides protection for UNM by assuring that UNM is not responsible for any contamination that exists on the property. He added that this level of study is recognized by the New Mexico Environment Department. He commented that there is always a risk that something may pop up eventually, but UNM has done everything possible to mitigate that risk.

Lt. Governor Sanchez asked who pays for any reclamation work if UNM starts excavating and finds contaminants, and Mr. Neale responded that UNM is reusing existing improvements and there will be no excavation related to this development, but if that were to occur during an excavation, UNM would seek out the responsible parties and take the necessary action.

Lt. Governor Sanchez said he would prefer to see a less reactive approach. He said there should be some language in the agreement stating that the seller will be responsible. He said the Board is trying to protect the University and the taxpayers.

Mr. Aragon said he sees nothing providing those assurances in the contract, bill of sale or purchase agreement.

Mr. Archuleta noted that this is an existing building that previously was a bank, and he assumes that the previous buyers of the property or the bank itself did due diligence on the property and its history to certify that it is clear. He expressed concern that it may not be reasonable to expect a seller to document what happened on a property 50 years ago, for instance.

Mr. Neale responded that the sellers are looking to sell their property and transfer any liability going forward. In paragraph 7, the seller affirmatively represents that there are not any known environmental conditions or underground storage tanks that they are aware of. He added that UNM would have a very difficult time if there were a requirement going forward that sellers be obligated to cure any environmental conditions. For most sellers, that would be a non-starter.

Mr. Archuleta suggested that the Board be careful not to unintentionally encumber a piece of property and ultimately drive the price up, etc. In his opinion, the Board needs to be looking at requests where the due diligence hasn’t been done in order to protect the buyers, which is not the case here.

Lt. Governor Sanchez said perhaps these reviews have to be on a case-by-case basis. In this case, there will be no excavation, and the request involves the reuse of existing property. He stressed, however, the Board should begin looking at properties where excavation is involved and ensuring that there is appropriate language in the documentation to protect the public interest. He commented that it is of no value to the Board of Finance, the public and the University if the Board ultimately finds itself having to deal with remediation problems that could cost more than the original project.

Ms. Clarke noted that paragraph 1.4 of the Environmental Assessment states the limitations of a phase one assessment including that, “Environmental site assessments cannot wholly eliminate uncertainty regarding the potential for recognized environmental conditions in
connection with a property." It also states that while all appropriate inquiry was done, this "does not mean an exhaustive assessment of the property." She said this is the standard of care for an environmental assessment.

Lt. Governor Sanchez commented, "I think it should be on a case-by-case basis. I think we really should start looking at those. And in this particular one, my personal opinion is that enough has been done here. But as we go forward in working with the University, as we look at projects, and any other entity, whenever.... there is new construction, we ought to look at some of those and we can talk about some of the language there."

Mr. Carrasco stated that, if the Board votes to approve this item, let the record reflect that the Board has received correspondence from Maureen McGuire, Associate University Counsel at UNM, explaining each special exception listed in schedule B, section II (Exceptions), listed in the commitment for title insurance by Stewart Title Guaranty Company, and affirming that the exceptions and reservations therein do not or should not adversely impact the University's intended use of the property. Those special exceptions include reservations contained in a patent from the United States of America, sewer, water and drainage easements and incidental purposes thereto; a utility easement and incidental purposes thereto; a right of way easement and incidental purposes thereto; and the rights of properties in unrecorded rental and lease agreements.

Ms. Clarke noted that 0.47 feet of a storage building from the neighboring property encroaches onto the subject property. She said Board staff has been informed by UNM that this encroachment will not adversely impact the use of the property.

Mr. Brasher moved for approval. Mr. Archuleta seconded the motion, which passed 6-0 by voice vote.

[Lt. Governor Sanchez left the proceedings and turned the chair over to Secretary Brasher.]

STATE TREASURER'S OFFICE
Presenters: Linda Montoya Roseborough, Chief Investment Officer; Treasurer James Lewis; Secretary Darryl Ackley, Department of Information Technology, and Acting Director for SHARE system; Brent Johnson, IT Bureau Chief

Ms. Roseborough presented the monthly investment reports for the month of December 2013.

Secretary Ackley presented an update to the Board on a notification incident that occurred on January 30 with respect to the State Treasurer’s QED system.

Treasurer Lewis thanked Secretary Ackley and Mr. Johnson for their help with this issue. He added that his office is adding additional positions in IT to deal with cybersecurity, and Computational Analysis and Network Enterprise Solutions (CAaNES) is advising that the State Treasurer's Office have a study done annually to address potential breaches.
Board members requested a follow-up report at the March board meeting.

Treasurer Lewis reported on the details of a break-in at the State Treasurer’s Office in January. He said the security cameras captured the event and arrests have been made.

13. **Quarterly Investment Reports for Quarter-Ended December 31, 2013**

Ms. Roseborough presented the quarterly report.

**GENERAL SERVICES DEPARTMENT**

Presenters: Pamela Nicosin, Deputy Director, Facilities Management Division

14. **Capital Buildings Repair Fund Financial Status Report for Month-Ended December 31, 2013**

Ms. Nicosin reviewed the CBRF Financial Status Report, which reflected an uncommitted cash balance as of December 1, 2013 of $13,378,905 and an ending cash balance as of December 31, 2013 of $13,013,637. There were no emergency declarations in the month of December.

Secretary Clifford noted about a dozen projects in the Financial Status Report have grants due to expire in June 2014, and that about $2 million in outstanding encumbrances has to be expended by that time. Ms. Nicosin responded that GSD is working to ensure those expenditures are made in time.

Secretary Clifford asked why there has been no activity on the grants for the Bataan Building and PERA Building restoration projects (design only). Ms. Nicosin responded that these projects were entered into by the staff architect, who has since left, and so the design has been delayed. She said it may be necessary to return the money to the fund to apply to other purchases.

Secretary Clifford asked why it has taken so long to hire a staff architect, and Ms. Nicosin responded that the position was posted, and the five respondents were not felt to be qualified. In the midst of discussion on posting the job again, the merger of Building Services and Property Control was underway and the posting was delayed. She said the position is now being reclassified in an attempt to attract more qualified candidates.

**STAFF ITEMS**

Presenter: Stephanie Schardin Clarke, Director

15. **Approval of Request to Allow State Purchasing to Use the Board’s Fiscal Agent Agreement as the Basis for Establishing a Price Agreement**

Ms. Clarke stated that, while previously the Board’s fiscal agent agreement could be piggybacked upon by other public bodies around the state, the State Purchasing Division has tightened up the requirements for piggybacking. Following due diligence by Mr. Primm and Board general counsel, it has been determined that, if the Board approves this item, it could remove impediments for State Purchasing to begin a process of converting the fiscal agent...
agreement into a price agreement. After approval, it would still depend on the State Purchasing Division and the fiscal agent, Wells Fargo, coming to mutually agreeable terms to enter into the price agreement. The Board’s approval today would allow it to move forward to that step. She said no downside has been uncovered in allowing the fiscal agent agreement to be converted into a price agreement.

Mr. Aragon moved for approval. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote.

16. Appointment of Board of Finance Subcommittee Members

a. Private Activity Bond Committee
b. Banking Committee
c. Committee on Reviewing State Treasurer’s Audit Process

Ms. Clarke reported that Board staff has worked with the Governor and her staff offline to make sure that they are comfortable with continuing the status quo membership, which is as follows: Private Activity Bond Committee, members Aragon and Brasher; Banking Committee, Treasurer Lewis and member Archuleta; and Committee on Reviewing State Treasurer’s Audit Process, Lt. Governor Sanchez and member Kormanik.

Mr. Aragon moved to approve the reappointments of the current membership of the three subcommittees. Treasurer Lewis seconded the motion, which passed 5-0 by voice vote.

17. Fiscal Agent/Custodial Bank Fees

Ms. Clarke stated that there are no billings to report from the custody bank for the State Treasurer’s Office because of some billing questions being dealt with, but the fees that staff has seen are in line with recent history under the new account structure that was established about a year ago. Ms. Clarke said the fiscal agent fees are available for review in the electronic packet.

18. Joint Powers Agreements

Ms. Clarke asked the record to reflect that the Joint Powers Agreements have been read into the record.
ADJOURNMENT

Its business completed, the State Board of Finance adjourned the meeting at 11:35 a.m.

Susana Martinez, President

3-18-14
Date

Michael Brasher, Secretary

3/18/14
Date