

BOARD OF REGENTS MEETING

AUGUST 18, 2017

NORTHERN New Mexico College





NOTICE

The Board of Regents of Northern New Mexico College will hold a regular meeting on **Friday, August 18, 2017** at **8:30AM** at the Northern New Mexico College – El Rito Campus, El Rito, New Mexico.

AMENDED FINAL AGENDA

ADDING ITEM VI-A-6

PUBLISHED AT LEAST 72 HOURS IN ADVANCE OF THE MEETING

I. CALL TO ORDER

II. APPROVAL OF AGENDA

III. COMMENTS FROM THE BOARD

- A. Reorganization of the Board of Regents – Action Required
- B. Board Committees – Action Required
- C. HED Initiative Resolution – Action Required

IV. APPROVAL OF MINUTES (July 14, 2017 Regular Meeting and July 14, 2017 Special Meeting)

V. PRESIDENT'S REPORT AND ANNOUNCEMENTS

- A. Celebrate Northern – Informational
- B. El Rito Campus Update – Informational
- C. Prosperity Works Loan Program – Informational
- D. Solar Array Project – Action Required
- E. Code of Conduct Policy – Action Required
- F. Strategic Direction - Informational

VI. STAFF REPORTS

- A. Vice President for Finance & Administration
 - 1. Audit Update - Informational
 - 2. Fiscal Watch – Action Required
 - 3. Monthly Budget Adjustment Requests (BARs) – Action Required
 - 4. Disposition of College Property – Action Required
 - 5. Resolution of NNMC Board of Regents – Bank Accounts – Action Required
 - 6. Audit RFP Selections, Permission to Negotiate with Finalist(s)– Action Required
- B. Provost & Vice President for Academic Affairs
 - 1. HEP Update – Informational
 - 2. Enrollment Update – Informational

VII. PUBLIC INPUT

VIII. EXECUTIVE SESSION

- (1) Limited personnel matters related to the hiring, promotion, demotion, dismissal, assignment, resignation, or investigation or consideration of complaints or charges against an employee;
 - a. No Items
- (2) Bargaining strategy preliminary to collective bargaining;
 - a. Collective Bargaining discussion of bargaining strategy preliminary to collective bargaining: potential topics for negotiation
- (3) Threatened or pending litigation subject to the attorney-client privilege in which the College may be a participant; and
 - a. Update on Monument Legal Case
- (4) Real estate acquisition or disposal.
 - a. No Items

Pursuant to provisions of NMSA 1978, Section 10-15-1(H)(2)(5)(7)&(8)

IX. ADDITIONAL ACTION ITEMS

A. Discussion and Possible Vote Regarding Employee Handbooks – Action Required

X. ADJOURNMENT

After the Board Meeting, the President will escort the Board of Regents on a campus tour, followed by a community luncheon sponsored by the Sociedad Venceslao Jaramillo.

In accordance with the Americans with Disabilities Act (ADA), physically challenged individuals who require special accommodations should contact the President's Office at 505-747-2140 at least one week prior to the meeting or as soon as possible.



NEW MEXICO HIGHER EDUCATION REGENTS' COALITION (NMHERC)

5 KIVA COURT, SANDIA PARK, NEW MEXICO 87047

August 1, 2017

Dear Regents:

At the last meeting of the Board of Directors of the New Mexico Higher Education Regent's Coalition (HERC) there was considerable discussion regarding the current reforms for higher education in the state proposed by the Secretary of Higher Education. As you are probably aware, these reforms include the "Trifecta" of: 1) Common Course Numbering, 2) General Ed. Core Curriculum and, 3) State-wide Meta-Majors.

The HERC Board agreed that these three approaches were positive moves for higher education in the state and expressed their interest in assisting in the process of ensuring that our universities are moving in that direction.

HED Secretary, Dr. Barbara Damron, was present at the meeting and indicated that progress is being made, but not as much as hoped.

As a result of this discussion, the Board agreed that we would write a letter to all regents of the seven 4-year institutions encouraging you to discuss this matter at your next Board meeting and consider adopting a formal resolution to support the "Trifecta" of reforms and direct your administration to move ahead in a positive manner to complete this process. Although this matter is up to each individual institution to consider, The HERC Board supports such action.

Should individual boards need additional information on this important matter, Dr. Damron would be pleased to make a presentation to your Board.

The following is a sample resolution that can be used, and modified as necessary, to meet the needs of individual institutions:

"The Board of Regents of _____ fully supports the reform efforts being implemented by the New Mexico Higher Education Department, specifically the "Trifecta" of 1) Common Course

Numbering, 2) General Ed. Core Curriculum and 3) State-wide Meta-Majors. The Board further directs University representatives to move expeditiously in assisting with the implementation of these efforts for the improvement of higher education for the students of this university and students throughout the state."

Thank you for your attention, and hopefully support, of this matter.

Sincerely

A handwritten signature in black ink, appearing to read "Dr. Dan Patterson".

Dr. Dan Patterson,

Past President, New Mexico Higher Education Regents' Consortium

A handwritten signature in black ink, appearing to read "Kevin Powers".
Kevin Powers,

President, New Mexico Higher Education Regents' Consortium

NORTHERN New Mexico College



The Board of Regents of Northern New Mexico College fully supports the reform efforts being implemented by the New Mexico Education Department, specifically the “Trifecta” of 1) Common Course Numbering, 2) General Ed. Core Curriculum and 3) State-wide Meta Majors. The Board further directs College representatives to move expeditiously in assisting with the implementation of these efforts for the improvement of higher education for the students of this college and students throughout the state.

Northern New Mexico College
Board of Regents President

Date



MEMORANDUM

To: Northern New Mexico College Board of Regents
From: Richard J. Bailey, Jr., President
Date: August 18, 2017
Re: Board of Regents Minutes

Issue

Northern New Mexico College (NNMC) provides, on a monthly basis, Board of Regents Minutes from the previous month for review and approval.

Recommendation

Staff recommends that the Board of Regents approve the Board of Regents Minutes for July 14, 2017 (Regular Meeting) and July 14, 2017 (Special Meeting) as submitted or if applicable, as amended.

**NORTHERN NEW MEXICO COLLEGE
BOARD OF REGENTS REGULAR MEETING
JULY 14, 2017**

I. CALL TO ORDER

A regular meeting of the Board of Regents of Northern New Mexico College was held on Friday, July 14, 2017, in the Boardroom of Northern New Mexico College, Espanola Campus. Regents present: Rosario (Chayo) Garcia (Via Conference Call), Damian L. Martinez, Esq. (Via Conference Call), Kevin F. Powers, and Melinda DeHerrera. Board Treasurer/Secretary Kevin F. Powers called the meeting to order at 8:35AM. Regent Powers asked that Amy Pena, Executive Assistant to the President/Board Secretary, take a roll call vote as two members of the Board of Regents were participating in the meeting via Conference Call.

Northern New Mexico College staff present: President Richard J. Bailey, Jr.; Ricky Bejarano, Interim Vice President for Finance & Administration; Dr. Ivan Lopez Hurtado, Provost & Vice President for Academic Affairs, Chris Trujillo, IT, Alex Williams, Business Office, Senior Financial Analyst, Carmella Sanchez, Director of Institutional Research, Mohammad Ali Musawi, Staff Writer/Reporter, Ryan Cordova, Athletic Director/Men's Basketball Coach, Tamara Trujillo, Assessment and Accreditation Coordinator, Brandi Cordova, Executive Assistant to the Vice President for Finance & Administration and Amy Pena, Executive Assistant to the President/Board Secretary.

Faculty Present: Dr. Ajit Hira

Others present: Barron Jones, Rio Grande Sun, Tim Crone, and Jake Arnold, Tim Crone, Roberta Orona-Cordova and Leroy Salazar

II. APPROVAL OF AGENDA

Regent Powers stated there was a request to move Public Input, number 7 to number 3. Regent Powers asked for any other changes to the Agenda. Regent Powers asked for approval of the Agenda.

Regent Garcia moved to approve the Agenda as presented. Second – Regent DeHerrera. Motion passed unanimously.

III. PUBLIC INPUT

Roberta Orona Cordova, President of the Northern New Mexico Normal School Alumni Association (NNMNSA) introduced herself as well as Leroy Salazar, Treasurer. The NNMNSA is planning a reunion from Fall 2018. Ms. Orona Cordova stated she was born and raised in Albuquerque; works in Los Angeles and her heart is in El Rito. Mr. Orona Cordova stated 12 years ago she purchase a casita in El Rito and every summer she spends the summer in her home, she is a professor at Cal State University in Los Angeles and teaches in the Chicano(a) Studies Department.

Mr. Salazar stated the Association is a group of ex-students that attended the high school when it existed between 1909 to 1969 when it was officially closed. At that time the College changed direction and transitioned into the arts and vocational area. The Association is aware of over 600 students plus that attended the school during that period and at this point in time, the Association has records of 480 plus Alumni they still know are alive and where they live. The Association incorporated as a nonprofit in the

early 1990s and has a Board who meets quarterly. The Association has several projects it is engaged in at this point, is self-sufficient, self-funded. They have built a memorial on the campus and this is to provide tangible evidence that there was the existence of the students who attended the school there.

Ms. Orona Cordova stated they are at the Board of Regents meeting because their Board decided they wanted to say something about the new President and she was commissioned to write something up. Ms. Orona Cordova read the letter to the Board (attached). Ms. Orona Cordova asked if the Board of Regents had any questions for her. Regent Powers asked Ms. Orona Cordova and Mr. Salazar for attending.

IV. COMMENTS FROM THE BOARD

Regent Powers asked if there were any comments from the Board of Regents other than the two Committee reports. Regent Garcia stated she does. Regent Garcia stated she feels like the Board of Regents needs to reorganize and she needs to step down as President because she is over 300 miles away and is difficult for the business of the College to continue with her being so far and not being able to run over and sign documents as she did before. Regent Garcia would like reorganization of the Board of Regents placed on the Agenda for the next meeting. Regent Powers stated he understands the situation and stated it will be put on the Agenda as an action item, first thing next meeting to reorganize. Policies state that the Board of Regents reorganizes in a certain time frame but he does not think there is any prohibition against doing it at another time. Regent Powers stated he would look into this before next meeting. Assuming there is no requirement or prohibition against it, it will be on the Agenda to do first thing at the meeting. Regent Garcia stated she thinks it would be best for the College and the community for her to step down. Regent Powers stated he certainly understands and he knows just coming from Albuquerque is an hour and a half and Las Cruces is four and a half. This is a long way for her to come.

Regent DeHerrera stated she reached out to Trevor Crombie again to find out the situation of where the College is with the Regents. Mr. Crombie is no longer with the Administration. She left a message with his successor and it has left her with the same situation again. Regent DeHerrera stated she would sit on the Board of Regents until she hears anything but she feels bad because Joshua Martinez has been approved since March and she feels he should be on the Board of Regents. Regent DeHerrera stated she does not know how the Board of Regents can go about fixing this but it needs to be fixed. Regent Powers stated he hopes to get some clarity on this between now and the next meeting when the Board of Regents reorganizes. Regent DeHerrera stated she called and emailed but at this point communication is not very well with them.

Regent Powers stated he knows Regent Garcia attended the Committee of Regents meeting and asked if she had anything to report from the meeting. Regent Garcia stated it was a great meeting with Secretary Damron and a couple of other Regents. Regent Garcia thanked Regent Powers for asking her to go. Regent Powers described the committee, which is a committee for the Regents because they felt it would be helpful to have a coordinating body to disseminate information and to have interaction between the Regents on various institutions. This was the fourth meeting the group had thus far and the group is trying to organize. Regent Powers is now the President of the Association and the Association will work to bring the group together and improve attendance. It is hard to get everyone together as they are spread all over the state. They are working on planning workshops for Regents, not only would it be a coordinating body but it would help educate Regents on financial matters, instructional and those types of things. They are hoping this leads to more effective leadership statewide. Regent Powers thanked Regent Garcia for the update.

Regent Powers stated the Audit/Finance/Facilities Committee met and the meeting was very good. A couple of the items are on the Agenda will be presented and require action. There are some informational items as well. In Regent Powers view, the College is making some good progress and is enthusiastic about where the College is and where it is going.

Regent DeHerrera stated the Academic/Student Affairs Committee met and there would be a couple of projects President Bailey will be speaking about, Prosperity Works and Eight Northern Pueblos MOU. Dr. Lopez will discuss the non-residence scholarship and addition about the HEP and program suspensions that the College is not seeing outcomes on. Update on the housing situation was positive and it looks like it is going well. Regent Garcia stated she was not able to call in.

V. APPROVAL OF THE MINUTES

Regent Martinez moved to approve the minutes as presented. Regent Garcia – second. Motion passed unanimously.

VI. PRESIDENT'S REPORT AND ANNOUNCEMENTS

A. Celebrate Northern

President Bailey reviewed the following:

1. Adult Education Program – received notice they were renewed for 2017-2018 funding. This is a combined Grant of \$196,000 and thanks to Liz Abeyta, Director, Adult Education Program and Zeke Parra, Grant Writer for continuing that program. The College is excited about expanding this and would also like to offer more adult education in the community.
2. The College officially heard it was approved for funding through Air Force Research Laboratory. This is combined NM Tech, UNM, NMSU, and NNMC. It will bring about \$500,000 to NNMC. Dr. Lopez is the champion on this.
3. The College recently heard and was approved for \$1.3M Upward Bound Grant through the Department of Education (DOE). This will allow College to have more robust, interactive program with local high school students. This is showing renewed confidence in the College and what the College is doing and President Bailey is very proud of the team for bringing it in.
4. President Bailey recognized 13 NNMC Student Athletes that were named academic all Americans. Students are doing well and that is a testament to Ryan Cordova and his entire athletic team. They have given students an importance of academics at the College. Regent DeHerrera asked for Criteria to be All American. Ryan Cordova, Athletic Director/Men's Basketball Coach stated you have to maintain a 3.2 Cumulative GPA, have to be in so many projects, and additionally, not required but four of the students carry a 4.0, which was not mentioned. Tony Gallegos has done a fantastic job in working with the women's teams and a number of the students are local and international. This shows that everyone can be successful at the College.
5. NNMC hosted the 10th Annual Sostenga Garlic Festival on July 1 and over 300 people attended (see page 18 of Board of Regents packet). The College would like to explore how to renew partnerships with Sostenga as an educational opportunity.

B. El Rito Campus:

1. The El Rito Campus held the first NNMCM Film Lecture Series. There was a potluck before hand and several members from around the valley attended.
2. The College did receive funding from LANL for the observatory and the question now is how much it will take to connect it online for local schools.
3. El Rito Watershed Conference will take place today (July 14, 2017) in El Rito. There are 25-30 speakers from around the valley speaking about everything from renewable energy and agriculture. Special thanks to John Ussery for running this.
4. The College hosted Ben Ray Lujan in El Rito to discuss future of the campus. He is very supportive, had staff members attend and also members of the College attended. Thank you Congressman for your time.
5. The Solar Array project is moving forward and the College is excited about what it will be long term.
6. President Bailey stated in the past the College has tried to have a Regents meeting in El Rito. As part of this, the President would like to propose the August meeting take place in El Rito and President Bailey would like to show Board of Regents improvements.

C. Prosperity Works Program.

President Bailey stated many public institutions have employees who are at the lower end of the pay scale who all too often get caught up in debt at a high interest rate. Through a partnership with Prosperity Works and True Connect there is an opportunity to partner with an agency that will allow employees to accept a loan up to \$3,000 (proportional to income) to pay back at a 24.9% interest rate which sounds like a high interest rate, but when you look at the state average especially for pay day loans, they can be in the 200%-300% interest range. The Legislature just passed legislation that will cap it at 175%. This may present an optional opportunity for employees, particularly for those at the lower end of the pay scale to free themselves from a spiral of debt. The College will not accept liability for this and will not accept the loans. The College partners with groups like LANB and the Credit Union who offer this. Because they are employees of the College, it serves as a way to reduce the risk. This is something the President is supportive of.

Regent Martinez asked where this came to the College from. President Bailey stated it came from a non-social justice work group. Regent Martinez stated he does not see any Colleges involved in this and the Board of Regents need more information. President Bailey stated a discussion could be arranged for the individuals to make a presentation at the next Board of Regents Meetings. Regent Powers stated this would be a good idea. Regent Garcia stated she is worried about the College becoming a company store. President Bailey wants to make sure the Board sees this as an opportunity and not a liability. President Bailey will get more information so the Board of Regents understands the nature of the partnership. It is not the College assuming the debt or offering the loans. The one thing the College would do is through payroll deduction pay the loan; there are also safeguards so people do not get in trouble.

Regent Martinez stated according to their website and literature it pays back at 8%, it does not say if it is net or gross. Given 8% for somebody who does not make at the higher end of the pay spectrum at the College, 8% is a lot, especially when you have the interest, it is more than a credit card. President Bailey stated this is based on a one-year payback. Regent Garcia stated they probably need help just digging themselves out.

Regent Powers asked counseling is provided. President Bailey stated the College is going to ask local partners to assist with this like Zia Credit Union who helps with the first year experience course who teaches financial planning. The idea was when this is rolled out; it would come with some education as to how to manage it. Regent Powers stated he could see the benefits; the opposition is that the College gets into payroll deduction. Regent Powers stated he could see where it can be problematic. Regent Powers would like to hear about success rates, satisfaction, and complaints before he is in a position to approve it.

President Bailey will get more detailed information to the Board of Regents, it will be included in the packet and representatives will be invited (Prosperity Works and True Connect). Regent Powers stated this is a cycle problem and being in effect 150% to 200% on some of these loans. If you can change the behavior and give them the opportunity to get off the merry go round it would be helpful. President Bailey stated the Board of Regents concerns are helpful, this is about helping employees who need help the most and he would like to explore the possibility.

D. Solar Array

President Bailey stated the nuts and bolts of this and for what it is worth, what is in the packet did go through legal review and they did have revisions. Regent Martinez stated the following regarding the documentation:

1. Article 26 - has a right of first refusal, which is dumb because it would never apply to the College.
2. Article 27 – is not needed – why would the College decide to waive liability on the chance that nothing is going to happen to anybody out there.
3. Insurance – everybody has their own insurance and if they are using property on lease and if they are not making College secondary on insurance and defending the College if somebody walks on the Solar Array and gets injured. This leaves the College open to a claim with risk management.
4. Article 27.10 – Arbitration Clause –If there is an issue, the College will go to arbitration. There are a lot of people that like arbitration which takes just as long as litigation and at the end of day you still have to go to court to get the judgment enforced. This has to occur in New York and has to go to court in New York. Every part of this needs to be on New Mexico law not New York law.

Just on these issues Regent Martinez is not comfortable with the lease as it is written.

President Bailey asked if all these things were in addition to the legal review edits. Regent Martinez stated he is looking at what is in the packet. President Bailey stated in the Regents email is the legal review, which is attorney client privilege. President Bailey would like to see if those four things are edited in the legal review. Regent Martinez asked if the lease in the packet was the lease revised after the legal review. President Bailey stated no, because the legal review was not completed, there are a couple of items in the legal review that were emailed to the Board of Regents. Regent Powers asked what the time constraint is on this. President Bailey stated there is a little time and he hopes to get this to State Board of Finance on September 18. Ideally, the Board would approve by the August Board of Regents Meeting. Regent Powers stated it would be needed before that; it is in excess of 30 days. For the September 18th meeting, the

deadline would be the first week in August. President Bailey stated he would track that. Regent Powers would like to have this run through the Finance Committee and then to the Board of Regents for the next meeting. This would be the best way to handle it. If need be there could be an additional Finance Committee meeting in addition to the regular one, in advance to fare out all the problems.

Regent Martinez stated as he is looking at the document and they still do not provide the College with a defense or cover for their negligence or name the College as a secondary insured, they added jurisdiction in New Mexico but they are still leaving arbitration in there. President Bailey stated there are still a couple of big issues to iron out. Regent Martinez stated arbitration is still in there and it would be in New York. President Bailey stated there are still a couple of big issues to iron out. President Bailey asked if it is possible to get from Regent Martinez bullet points that list the things to be changed in order for it to be completed. Regent Martinez would like whoever did legal review to call him to discuss changes. Regent Powers would like an updated draft out to the Finance Committee who can review and make a recommendation to the full Board of Regents.

Regent Powers asked if the parcel that the College is going to allow them to use for the solar array, if this parcel is valuable for anything else that might come down the road. Is there something in 10 years, the college might say darn why did we do it. President Bailey stated the land is valuable and the things the College is forfeiting to do this is the possibility to use the land in another capacity – future dorms, agricultural projects, etc. There is still land that the college has to do things on existing property it has. Ultimately, the strategy is about reducing utility costs. In terms of the institution having flexibility to use this property in the future, the College has to look at long-term solutions. This is a fair point and the College has to go in eyes wide open because this is a 30-year deal. When looking at the 3% or so that will be saved immediately on electricity and then the double digit drops in electricity costs for years, there are benefits that make it worth the risk. Regent Powers stated the College has the actual lease payments contained in the lease, which amounts to about \$200,000 over the life, and in addition there are benefits in terms of reduced energy costs that are not part of the lease. The agreement on that is subject to annual rate. President Bailey stated this is correct. Regent Powers stated there are no guarantees on that. President Bailey stated this is correct.

Regent Garcia asked if all the residents in El Rito know what it is going to look like and if they realize it and if they are on board. President Bailey stated it came up in the community forum and it will be visible. It is being embraced; the College is not the only one benefitting from the reduced rates. Everyone tied into the grid is going to experience the same savings long term in electricity. The other is it is a visible symbol of the rebirth of the campus. El Rito is a town blessed with several incredible artists and there are groups in the community looking at the idea as to how to put on the fence line on 554 that would compliment the solar array and at the same time capture some of the traditional spirit of the community. President Bailey is not guaranteeing this but there are groups considering this down the road. Regent Powers asked if this has been presented to the community. President Bailey stated it would be. Regent Powers would like to have the next meeting in El Rito and have some kind of a board to show the location of the solar array. The Board of Regents needs to make sure everyone has a final opportunity to voice his or her opinion on it.

Regent Martinez asked if there is a professional rendering of what they will look like. This should be on a big board so people can see what it will look like on the roadway. President Bailey stated it will not specifically look like in El Rito but do have an artist rendering and the College has diagrams as to where it will go.

Regent Martinez asked if these arrays follow the sun. President Bailey stated they are trackers. Regent Powers asked if they are multi or single access trackers. President Bailey stated he does not know. Regent Powers stated this is important to know because of the directions they will turn and how intrusive they will be. Everyone needs to understand what is going on the site.

E. MOU with Eight Northern Pueblos

President Bailey stated with the relationship with the College and the Eight Northern Pueblos has been strained. A lot has to do with the College had the American Indian Center at one time as it closed down. The other the Northern Pueblos Institute that was academically focused but because of budget cuts and completion of grants, that was cut back at well. There is an opportunity for the College to build strong healthy relationships with the Pueblos. President Bailey has met with the Pueblos and one thing that would help is a tuition scholarship program. The concept of this is each one of the Eight Northern Pueblos would be able to select a student from their Pueblo to attend the College and receive a scholarship equal to tuition. The draft given to the Board of Regents, the same legal review email was also sent to the Board of Regents in their email. The template used for the MOU is the one that is active with Highlands University. They offer a similar program but offer three scholarships to each pueblo. It is more appropriate for the College to offer one. President Bailey asked for review and comments from the Board so he can send the draft to the ENIPC for their comments and legal review.

Regent Garcia loves the idea, it is a great idea and the College needs to mend bridges it has burned in the past but asked if there are any anti-donation clauses that would be broken. Mr. Bejarano stated this would be like any other scholarship so it would not break anti-donation. Regent Powers asked if the Academic/Student Affairs Committee reviewed this scholarship. President Bailey stated it was discussed and they are in favor of strengthening the relationship with the Pueblos. Regent Powers stated this is a draft and the guidance would be to have the amendments made based on legal review and place it on the Agenda for final approval at the next meeting. President Bailey would like this in place by the fall semester and would like the Board of Regents to approve that he sent the draft with the legal comments to the ENIPC for review. The Board would then see it before it went final and for signatures. This is something that would be signed by Regents and the President. Regent Powers stated he does not see anything wrong with this. Regent Garcia stated she would like the College to jump on this. (Regent Martinez was cut off the conference call and rejoined the meeting.) President Bailey apologized for the timing of this and would ultimately like approval for the fall semester. President Bailey he would like approval from Board to send amended document to ENIPC in draft form for their review, including legal review, and once that is complete, ideally by August if there is way to have approval by the Board to have it signed by the Board President and President Bailey. Regent Martinez asked if it could be approved now pending the second review. President Bailey stated if the ENIPC does not have any edits that there is pre-approval from the Board of Regents for signature, this would work.

Regent Martinez moved to approve pending any changes that the ENIPC might have and to also include in that document any changes the legal team recommended. Second – Regent DeHerrera. Motion passed unanimously.

VI. STAFF REPORTS

A. Vice President for Finance & Administration

1. Audit Update

Ricky Bejarano, Vice President for Finance & Administration stated the College terminated the contract with Jaramillo Accounting Group (JAG) and an RFP will be issued for a new audit firm. This was discussed at length with the Audit/Finance/Facilities Committee and it is thought it will be best to have a fresh set of eyes moving forward.

Regent Powers stated this was taken up in the Audit/Finance/Facilities Committee and everyone was in agreement to take this particular action. The Board of Regents looks forward to getting a new firm on board as soon as possible. Regent Martinez stated he thinks the College needs to move forward with a fresh set of eyes.

Mr. Bejarano stated the College has finalized the report for May and submitted it to the Audit/Finance/Committee a rough draft as of June 30th. There are still a number of expenditures to be accrued for year-end as of June 30th. The College is being cautiously optimistic; it appears the fund balance will be better than anticipated. The College budgeted fund balance to meet this current fiscal years budgetary need. The College will keep the Board of Regents posted as it moves forward.

Mr. Bejarano stated the College received a notification from the State Controller and the State Auditors Office that the College's portion of the Land Grant Permanent Fund that has been showing on the balance sheet since inception is going to go away. This is a \$2.9M item, which is an asset that has been sitting on the balance sheet, and it has to go away because the State is also reporting it. It is the State Controller's call and it was determined it was being double counted and will be removed. It has no real impact to the College other than not showing a \$2.9M asset on the books that the College can use.

Regent Powers stated this change in accounting would impact all higher education institutions across the State. Mr. Bejarano stated it would impact all constitutionally created universities and colleges. Regent Powers stated it would also affect other beneficiaries of the land grand permanent fund. Mr. Bejarano stated the revenue stream is still allocated the College just does not get to use the asset.

2. Fiscal Watch

Regent Powers stated the Fiscal Watch Reports (page 82-93 attached) are all the financial statements for May. Regent Powers stated the Board of Regents need to approve this document. Regent Powers asked for questions from any of the members regarding the reports. Regent Powers stated it was reviewed at the Audit/Finance/Facilities Committee and it is better than anticipated which is good. Regent Powers stated he would entertain motion to approve the Fiscal Watch Report.

Regent Martinez moved to approve the Fiscal Watch Report as presented. Second - Regent Powers. Motion passed unanimously.

Regent Garcia stated she heard the State is anticipating another 6% loss. Regent Powers stated there have been a series of articles in the Albuquerque Journal about higher education in the State from enrollment to a history of what has happened in State funding. Higher Education has been hit disproportionately hard and it seems there is a big bulls eye on higher education right now but is not sure what it is going to take to get rid of those.

3. Monthly Budget Adjustment Requests (BARs)

Regent Powers stated this an action required item. Mr. Bejarano stated these are standard BARs required primarily for year-end. In comparison to other years the College is down on quantity and anticipating lowering the number even more. Regent Powers stated this was reviewed at Audit/Finance/Facilities Committee and would entertain a motion to approve.

Regent Martinez moved to approve the BARs as presented. Second – Regent Garcia. Motion passed unanimously.

Regent Powers stated to be clear, the Fiscal Watch and BARs that were just approved were for the period ending May. It is great that as of the 12th of the July, there were statements for June. They are very preliminary and subject to edits and adjustments. They are not ready to be approved at this point in time. They will be reviewed at the next meeting. Mr. Bejarano gave credit to Alex Williams to produce the documents and her professionalism in doing so.

4. Disposition of College Property

Regent Powers stated this has been withdrawn at this point and will be resurrected at next months meeting

B. Provost and Vice President for Academic Affairs

1. Bienvenidos Scholarship Program

Dr. Ivan Lopez Hurtado, Vice President for Academic Affairs stated this was a recommendation from the Board of Regents at the last meeting, the idea to expand the eligibility criteria for the Bienvenidos Scholarship. This is a scholarship for students who are nonresidents of New Mexico and will give them in state tuition. Items added (page 163) were to cover students that were not considered in first round. One of those is to include students that are already college students and they may not have been successful in high school but now they are successful college students or a transfer student from another state that is coming to the College. The bullet that states they have completed 12 higher education hours with a cumulative GPA of 3.0 or higher now they want them to be eligible for this scholarship. Second, adding criteria for students who have completed a GED program and the criteria – the College knows there are several exams nationwide and the criteria is something that the College mapped to a 3.0 GPA in high school. Dr. Lopez asked for the approval from the Board of Regents to add these additional items to the criteria and the College has been developing the processes internally. The College wants to make sure as many students as possible are covered.

Regent DeHerrera stated this is a great idea. Regent Powers asked if the Academic Affairs/Student Affairs committee discussed this item. Regent DeHerrera stated this was discussed and the more people the College can get is great.

Regent DeHerrera moved for approval of the addition of the two items in the scholarship criteria in general. Second – Regent Garcia. Motion passed unanimously.

President Bailey thanked Regent Martinez for this idea. With the Boards approval, NNMC will be the only college doing outreach to high school equivalency graduates in giving them the same opportunities as high school graduates. Regent Powers asked for any additional comments from the Board of Regents. Regent Garcia thanked Dr. Lopez for work on this.

2. Suspension of Programs

Dr. Lopez stated the College has taken seriously a process that for many years did not happen in the institution and it is called program review. This is an academic process where the College analyzes the finances, enrollment and mostly the academic quality of the programs the College has. The College wants to make sure the programs need to have adequate resources and are in compliance with the Higher Education Department. Through this process where all academic affairs participated, Chairs, Deans and Deans Council were all involved in this review. This process occurred in April and the results were submitted to the Dean's Council, Provost and President for recommendations. What is being recommended is suspension, not termination, of four academic programs (attached). The complete report is available if needed. These programs have shown a very low enrollment and have showed low graduation rate. The funding right now in New Mexico is based in student completion of courses and programs. If the College does not graduate students and students are not enrolled in the courses, the College does not get money. It is important to focus on those programs that are doing well and the College opens the door to new programs. The College is discussing several initiatives and one is to substitute the Bachelors of Music will be replaced with the Bachelors of Fine Arts. Dr. Lopez will propose this in the next few months. One of the problems the Bachelor of Music currently has is that Associate Degrees in General Arts do not articulate to music. When they complete an associate degree in film and digital media they cannot continue to any Bachelor program at the College. This is wrong. Students in the Associates of Arts, there is nothing else for them. Students in the Associates of Music can continue with the Bachelors. The idea with a strong program in Fine Arts is to give an opportunity all these areas that were not covered under the Bachelors of Music. This new program is going to have concentrations, obviously in music, general fine arts and film and digital media. It is important to take this step right now because every time the student declares a program, the students need to be honored. Currently, the College has 7 students declaring the Bachelors of Music and the College has the commitment that it will have to teach them out. Imagine a program that has to be wrong with 7 students; this is extremely costly to the institution, especially in these financial times. The College does not want to open the door this fall to get new students declared, that will be difficult for the College to graduate. Fine Arts will take a year before it will be offered because the process with the Higher Learning Commission takes six months, this is why the College is planning sometime in December or January, and the Board of Regents will have this proposal. Music will go away in a suspended form and if the College wants to bring it back it can. The idea is to replace it with a Bachelor Program in Fine Arts. The program in Wildlife Fire Science, if you see the numbers, currently the College has very few students - 4 students declared. What the College knows through the program review is the College does not need an Associates or Certificate. The skills for the job market can be caught through continuing education. Somebody who needs to go to the field in these areas actually does not need all the general education that is required for an Associate Degree. The College believes if the demand signal is out there, the College can easily start the program in continuing education or if the demand signal is so high again, it can be brought back because it is only suspended and not terminated. The Associate in Police Science there is no interest out there.

Dr. Lopez stated it is really important to take action on this as the College is recommending because the College needs to submit the report at the end of the calendar year to the Higher Learning Commission (HLC) and one of the areas they are looking at is the ratio of full time faculty members and the programs currently offered. Today, there is not any single full time faculty member associated to the Police Science Degree or to the Wildland Fire Degree. Therefore, going to December with the report to the HLC that the College still has programs without a full time faculty member will not be good for the College. In music, there is one full time faculty member and this individual will not be terminated. This individual will be part of the core of the new program in Fine Arts.

Regent Powers asked if the Academic Affairs and Student Affairs reviewed this. Regent DeHerrera stated they did and agreed with the fact that with the Bachelor of Fine Arts students are covered. The other two, students do not have anywhere to go towards is a different story but they agreed. As long as there are programs to fill the empty slots they are in agreement. Regent Powers stated the police and fire were pretty easy. The music was a little more difficult situation in that it involves more students. It sounds like the Bachelors in Fine Arts fills the mission.

Dr. Lopez stated this is the case and he would like to quote Dr. Calvacante who stated the College does not have the resources to have a good program in music. There has been an enormous turn over in leadership in the program. Dr. Lopez stated the Department of Fine Arts are in favor of this new initiative that will hopefully be a program well thought out and will include elements with the College of Business Administration. Some of the artists produced may not get a job but if the College gives them skill set to develop their own business they will be more successful. Dr. Lopez wanted something out of the box, state of the art in terms of innovation. Dr. Lopez encouraged them to include elements of STEM. If you go through the STEM area and start doing these partnerships STEAM instead of STEM, the College can pursue funding through the NSF but it has to be a more robust program. The College is in discussions currently to propose a program in Nurse Aid, a certificate. There are about 200 jobs available just in Rio Arriba County. This will be brought to the Board of Regents. The College is also discussing a helicopter pilot program. In order to bring new programs, the College has to get rid of those not producing students and the demand is not there. In terms of interest of students, the demand is not there. Regent Powers asked Regent Garcia or Martinez for questions. They did not have questions. Regent Powers asked for comment.

President Bailey stated the request is for these programs to be suspended not terminated. At any time the College wants and if the demand is there, they can be turned back on. The seven students in the Music Program will graduate with a Bachelors of Music. With regard to Wildfire Science – all are represented in El Rito in El Rito at the Watershed Conference and one challenge was to look at through continuing education to offer this program in El Rito. In terms of fine arts, one challenge given to faculty is to plant the seeds for renaissance. This Bachelor of Fine Arts is going to offer more opportunity, even the students who are at the College specifically for music will have a Bachelors in Fine Arts with a concentration with Music. Professor Ajit Hira asked for clarification if it included all degrees in Wildland Fire Science. Dr. Lopez stated the Wildland Science two degrees are offered and are being proposed for suspension. Dr. Lopez stated Dr. Bailey is making an emphasis that the Fine Arts Program be very successful. In the last seven months, the College has hired two full time faculty members for fine arts. This is a way to express the College is really committed to fine arts. The College wants to make them stronger but certain decisions need to be made to approve. Regent DeHerrera stated the seven music students might transfer to Fine Arts and have a broader degree with emphasis in Music. Dr. Lopez stated he believes this will be so developed the students will change.

Regent Powers asked how the process went for this, was everyone in agreement, were there concerns. Dr. Lopez stated there is always sadness when you have to do something like this. You have to let go of something but the leadership – it was unanimous by Deans and Chairs to move forward with this. They understand the constraint on student services and positions for new faculty members in the programs that are doing well. There is an incredible program in humanities where new faculty members are needed and there is no way to bring them in without stopping the bleeding. There was sadness but it was unanimous.

Regent Powers would entertain motion to approve suspension of programs.

Regent Garcia moved to approve suspension of programs. Second Regent Martinez. Motion passed unanimously.

Regent DeHerrera stated it is always sad and the College is going to be looked down again because of this suspension not knowing the circumstances. Barron Jones, Rio Grande Sun stated he would get this out right.

3. Common Core

Dr. Lopez stated this is an initiative that was started two and a half years ago by the Higher Education Department and it is called the Trifecta project because it has three different areas where the College is trying to do better for the students. When students transfer among New Mexico's institutions, many times the courses they have taken before do not transfer. The State has started this initiative to address this problem. There are three faces to this (1) improve the general education core - right now, the Colleges have, depending on the institution has between 36 and 38 credits for general education. Both in Bachelor and Associate Degrees. These courses are highly dependable on the institution. A student doing general education in Northern New Mexico and wants to transfer to UNM is finding that many of those courses do not transfer. The idea of general education core is that all institutions in New Mexico agree in a set of courses and more than course, a set of student learning outcomes that are going to be common to all of New Mexico. A course may have a slightly different name but there will be an agreement that says the student is learning at least 80% of the student learning outcomes expected at Northern compared to UNM and therefore the course will transfer. This is the first initiative and it has been a little controversial. There has been, especially from NMSU and UNM, some faculty members, they have opposition to this idea and it is an issue of communication. Dr. Lopez believes it is a misunderstanding of what the purpose of this and people are afraid that certain areas in social behavioral sciences, humanities, language and letters may go away. Dr. Lopez stated he believes the fear is that they might loose their job when actually the new proposal opens the door to many new great ideas. Actually, the area that is taking a cut in the new proposed general education curriculum is STEM. The sciences are the ones that are being cut, not humanities. Representatives from every institutions have been meeting every month, next meeting July 21st in Albuquerque at UNM and they are still discussing the document to be completed. This has been the most controversial issue. The hope is that this project starts in fall 2018.

Regent Powers asked if the Colleges faculty and leadership is on board for this or are there reservations. Dr. Lopez stated the College is not different than any other institution in the sense that if he gives the spectrum of opinion, there is a bell curve. There are the two extremes and people in the middle. The last document received in March from HED and it was distributed to faculty was well received as opposed to the original document that came in October. The changes have been embraced but there are still extremes. The feel is

more positive and the progress will be seen at the next meeting. This has been driven by faculty members throughout the state working on this. The discrepancies on opinion are on faculty members. This is not a centralized process, there is no top down approach, everybody is discussing and everybody has different opinions.

Dr. Lopez stated the common course numbering, everybody likes it and this is going to be fully implemented fall 2018. Every two or three weeks, the Colleges are requested to submit syllabus to the Higher Education Department and what they do is assign a common course number to the courses being offered. College Algebra will be the same number in the entire State. They are moving smoothly on this.

Dr. Lopez stated Metamajors is the last one and was launched a couple of months ago. The idea is to be done by the end of the calendar year. The idea is that the Higher Education Departments will take all the programs offered in New Mexico. Associates and Bachelors and what they will create is a set of fields called Metamajors and this set of courses are going to be common to different programs. For example, there may be one in Engineering and it will consist of several courses in the Engineering field that are common to all engineering programs in the State. This is a way for everyone to approach students who are undecided and if they do the Metamajor all courses will transfer to any Engineering program. This will be developed using some type of intelligent system that UNM has developed and this software, very powerful, will create optimal set of courses to build this Metamajor. Regent DeHerrera asked for the timeframe. Dr. Lopez stated the College needs to submit by the end of November. The College is ahead of this one because of contacts with UNM. NNMCM started this last year, it was submitted in May of 2016. The College is in perfect shape with this.

Regent Garcia thanked Dr. Lopez and this was one of Dr. Damrons concerns that not all the colleges are participating and giving information needed. Regent DeHerrera asked when it would go into effect. Dr. Lopez – desire is fall of 2018. Dr. Lopez has concerns with the one in general education because it would be difficult and there is still debate. Regent Powers thanked Dr. Lopez.

4. Student Satisfaction Survey

Dr. Lopez stated he would not go through entire survey as the Board of Regents has it. There are two surveys, one is for current students and one is for students who have graduated. The students are satisfied with the academic programs at the College. Comments can be seen on page 186. The issues (page 185) are with student services and some of the facilities, which the current administration is trying to address. There are still concerns with online course offerings, they mean the quality. The College started an initiative where there is a peer review process to evaluate online courses. The College knows the quality of some of the courses has been poor, but Faculty knows there is Quality Matters, which they need to follow. There are a group of colleagues reviewing the courses for feedback. So far, six courses have been reviewed and the College will continue reviewing courses each semester.

Regent Powers stated on the chart on page 9, there are three common non-physical plant items, online, evening and weekend course offerings. Students who took this survey are interested in the College being more accommodating to their needs in terms of timing. Dr. Lopez stated there is a trade off in all of this. Dr. Lopez stated the College needs more resources to run courses in mornings and evenings. A survey was sent out to ask what time students were able to take courses with NNMCM. The College received a uniform response of 30% of students who cannot take courses at any of the times (7am-10pm). No matter what is done, there is going to always make 30% of the students upset. The only way to keep everyone happy is to have morning and evening offerings but that is an extra cost to the College. Faculty is trying to be creative.

Some faculty have recorded courses and offering this to students. The College is trying to think out of the box but this is difficult.

Regent DeHerrera asked for the percentage of students who took the survey. Dr. Lopez stated 38%.

The Board took a brief recess from 10:35AM and returned to Executive Session at 10:45AM and will return from Executive Session. This meeting will then adjourn, return to the Special Meeting and adopt the resolution and adjourn. Regent Martinez and Regent Garcia stated they would await the return call.

VII. PUBLIC INPUT

Regent Powers stated while the Board of Regents was on recess it was brought to his attention when the Public Input was moved, the Board of Regents inadvertently blocked out Jake Arnold who believed it was going to be later in the meeting. Regent Powers asked to allow Mr. Arnold to address the Board of Regents briefly.

Mr. Arnold apologized for being late. Mr. Arnold stated he stated it is Bastille Day – Vive le France – long live France and long live the cooperation between this country and the country and the French nation. Would like to bring the picture in Board Room to the Board of Regents attention, which is France’s greatest historic site. A good swath of Northern New Mexico was under French rule with Louisiana and that border later moved on. New Mexico has an association with France in New Mexico; this can be seen by the French named villages. Of course, this is also the 100th anniversary of the arrival of the American troupes in France in WWI and their famous slogan “Lafayette We are Here.” Mr. Arnold wanted to report to BOR that La Sociedad Venceslao Jaramillo is working on and trying to formulate a research project which will be discussed with President Bailey which covers the Juan Jose Land Grant that covers the north tract of El Rito and the College and so on. This would be a way for the College to get grant funding for that project. La Sociedad Venceslao testified before the State Land Grant Committee in Taos. As the same meeting, solar array was discussed in El Rito before that committee for uses of the area that are now under Forrest Services control or perhaps are within the boundaries of the Juan Jose Lovato Land Grant. The people that are members of the land group, Mr. Arnold is not one of the heirs but is working with them through La Sociedad Venceslao Jaramillo. They are supporting the solar array project in El Rito because they see it as a way that if it is successful to working with Kit Carson on getting additional solar array projects very near the College and tying into that definitely supportive. When the Board of Regents goes to El Rito for their next meeting, they would like to invite the Board of Regents for lunch after BOR in El Rito following the Board Meeting. Mr. Arnold asked that the acoustics be addressed for the Board Meetings.

Mr. Arnold understands there is a legal RFP and the public would like to see it when it is developed and what law firms are involved. Mr. Arnold thanked the BOR for their time and El Rito is appreciative of all the hard work everyone is doing. They are so supportive of the efforts.

VIII. EXECUTIVE SESSION

Regent Martinez moved to enter into Executive Session to discuss limited personnel matters pursuant to NMSA Section 10-15-1(h) of the New Mexico Statute annotated specifically to deal with items bargaining strategy, collective bargaining and the Monument lawsuit. Second – Regent DeHerrera.

A Roll Call vote was taken (Regent Garcia – yes, Regent Powers – yes, Regent Martinez – yes, Regent DeHerrera - yes). The Board of Regents entered into Executive Session 10:54am.

IV. POSSIBLE ACTION ON EXECUTIVE SESSION

Regent Powers entertained a motion to return from Executive Session. Regent Garcia moved to return from Executive Session and to enter into Regular Session. Second – Regent Garcia. Roll Call Vote: Regent Martinez - yes, Regent Powers - yes, Regent - Martinez – yes, Regent DeHerrera - yes. Motion passed unanimously. The Board of Regents returned from Executive Session at 11:32am.

Regent Powers stated that only the items mentioned in the motion to go into executive session were discussed in executive session and no decisions were made.

Regent Powers stated the date of the next regular meeting of the Board of Regents would be on Friday, August 18, 2017 at the El Rito Campus at 8:30AM in Alumni Hall.

X. ADJOURNMENT

Regent DeHerrera moved to adjourn. Second – Regent Martinez. The Board of Regents Meeting adjourned at 11:34AM.

APPROVED:

Rosario (Chayo) Garcia, Board President

Damian L. Martinez, Esq., Vice President

**NORTHERN NEW MEXICO COLLEGE
BOARD OF REGENTS SPECIAL MEETING
JULY 14, 2017**

I. CALL TO ORDER

A special meeting of the Board of Regents of Northern New Mexico College was held on Friday, July 14, 2017, in the Boardroom of Northern New Mexico College, Espanola Campus. Regents present: Rosario (Chayo) Garcia (Via Conference Call), Damian L. Martinez, Esq. (Via Conference Call), Kevin F. Powers, and Melinda DeHerrera. Board Treasurer/Secretary Kevin F. Powers called the meeting to order at 11:34AM.

Northern New Mexico College staff present: President Richard J. Bailey, Jr.; Ricky Bejarano, Interim Vice President for Finance & Administration; Dr. Ivan Lopez Hurtado, Provost & Vice President for Academic Affairs, Chris Trujillo, IT and Amy Pena, Executive Assistant to the President/Board Secretary.

Faculty Present: Dr. Ajit Hira

Others present: Tim Crone and Jake Arnold

II. APPROVAL OF AGENDA

Regent DeHerrera moved to approve the Agenda as presented. Second – Regent Garcia. Motion passed unanimously.

III. STAFF REPORTS

A. Vice President for Finance & Administration

1. Resolution of NNMC Board of Regents – Bank Accounts

Ricky Bejarano, Interim Vice President for Finance & Administration stated essentially the College is out of date on signature authority for bank accounts. This Resolution would allow the following:

1. Open and Closing of accounts by Mr. Bejarano, Interim Vice President for Finance & Administration
2. Require two signatures on transactions
3. Exclude the budget analyst from signature authority; this was done as an emergency measure.
4. Signature authority
 - a. President of the Board
 - b. Regent Powers
 - c. President Bailey
 - d. Ricky Bejarano

Always requiring two signatures.

Regent Powers stated with the number of people moving around in Administration this makes good sense to get this accomplished at this time and with the change of the chair of the Board of Regents this may need to be changed. Regent Powers asked if there were any changes from any members of the Board of Regents.

Regent Garcia stated this might have to be changed in a month. Regent Powers stated more than likely it would. Regent Powers entertained a motion to approve the Resolution.

Regent DeHerrera moved to approve resolution. Regent Martinez – second. Motion passed unanimously.

IV. ADJOURNMENT

Regent DeHerrera moved to adjourn. Second – Regent Garcia. The Board of Regents Meeting adjourned at 11:38AM.

APPROVED:

Rosario (Chayo) Garcia, Board President

Damian L. Martinez, Esq., Vice President

*Office of the President***NORTHERN New Mexico College****MEMORANDUM**

To: Board of Regents
Northern New Mexico College

From: Richard J. Bailey, Jr., President

Date: August 18, 2017

Re: Prosperity Works / True Connect Employee Loan Program

Issue

In an effort to help Northern New Mexico College employees who are in challenging debt cycles, a partnership with Prosperity Works and True Connect would allow NNMC employees to secure a loan (with a 24.9% APR) to pay off higher interest debt. The cap on the amount of the loan will be proportional to the individual's monthly salary, and will be paid back in one year through payroll deduction.

Overview

The New Mexico legislature just passed legislation that will limit payday loans to a maximum APR of 175%, but the change is not scheduled to take place until 2018. Even with this reduction, employees may be caught in a difficult debt spiral. This opportunity may help some employees to pay off higher interest debt and escape the debt spiral.

Recommendation

I recommend the Board of Regents consider this partnership and give comments and suggestions.



QUESTIONS ASKED OF TRUE CONNECT

1. Who else is doing this? (government agencies specifically higher education)

RESPONSE: We have over 1500 employers across the US with access to TrueConnect for their employees, including public sector employers - cities, counties, school districts.

In New Mexico, Dona Ana County has been using TrueConnect for county employees since February. The Town of Bernalillo has since April. The Santa Fe Public school district launches TrueConnect on August 15 for school employees. New Mexico State University is actively reviewing adding TrueConnect at the request of their union, who formally requested that it be added to the employee benefit package.

2. What has the acceptance rate been?

RESPONSE: We typically see between 15-20 percent of employees use TrueConnect each year once it is made available. 18 percent of Dona Ana County employees used the service within the first 6 months.

3. What risks does the College take?

RESPONSE: There is no financial or other risk to the college. The college is not a party to the loan. The college does not guarantee the loan. The college does not fund the loan. The college is simply making a voluntary benefit available to its employees who choose to use it- at no cost to the college. And the system is automated, so there is very little the college needs to do. We just need about a week or two with the payroll and benefits team to set you up in our system.

TrueConnect Agreement

Agreement: The parties to this TrueConnect Agreement include the undersigned employer ("Employer"), and Employee Loan Solutions Inc. ("Employee Loan Solutions").

Description: TrueConnect is a small loan voluntary benefit program helping employees facing a financial need.

Loans: Fixed sizes no larger than \$3000, depending on employee income and tenure. Repayment is through payroll deductions over a period of 12 months.

Employee Loan Solutions Shall:

1. Maintain a program website portal through which employees can apply for a loan under the TrueConnect program.
2. Provide a file to Employer each pay period noting the payroll deduction amounts from each borrower.
3. Provide a secure interface through the program website for Employer to transmit reporting information.
4. Provide tools to facilitate automation of these steps.

Employer Shall:

1. Communicate the TrueConnect program to employees as a voluntary benefit utilizing approved written materials and the program website.
2. Submit through the program website an employee census file each pay period identifying employees and providing compensation data and related information which will be encrypted by TrueConnect. This can be automated.
3. Subject to any limitations under state law, Employer shall accept voluntary wage authorizations executed by employees, and process those authorized TrueConnect deduction instructions to facilitate loan payments, including repayment of the balance of any loan by deducting the sum from any terminated employee's last paycheck.
4. Send a report of actual deductions to TrueConnect's secure platform. This can be automated.
5. Each payday, the total of all loan deductions will be transferred to the bank for repayment through either:
 - ACH transfer or
 - Auto-deduction from designated Employer Account.

6. Communicate to Employee Loan Solutions (i) any changes to Employer's normal payday date, (ii) any terminations of employees having outstanding loans, (iii) any revocations of payroll deductions, or (iv) other pertinent information to Employee Loan Solutions through the program website.

Banking relationship: Loans will be made by an FDIC insured bank. Employer will provide full cooperation to the bank and acknowledges and agrees that the bank will be a third party beneficiary of this Agreement.

Termination: This Agreement may be terminated at any time by either party providing notice of termination to the other party. The program shall continue indefinitely until terminated.

Wind-Down: If any party terminates this Agreement for any reason, Employee Loan Solutions and Employer agree to cease all marketing and new loan originations. Employer agrees to continue all necessary payroll deductions until all existing loans are fully repaid.

Miscellaneous: The Agreement shall be effective as of the date of execution by the Employee Loan Solutions below. This TrueConnect Agreement constitutes the entire agreement of the parties and may only be modified by a subsequent agreement in writing signed by the parties hereto.

Northern New Mexico College

Employee Loan Solutions Inc.

By: _____
 Title: _____
 Date: _____

By: _____
 Title: _____
 Date: _____



EMPLOYERS

Financial stress is suffered by millions of Americans living paycheck to paycheck and is impacting workplace productivity and employee retention. The patented TrueConnect Loan program was developed as a voluntary employee benefit to allow employers to address the financial wellness of their workforce.

TrueConnect Loan is free for employers to offer and requires very little administration because loan origination and administration are automated and there is no benefit enrollment process. The program separates employers from the personal financial lives of employees, while providing a safe solution to employees in need.

“ When I first put out the announcement that we were offering this voluntary benefit, my computer lit up. I could not believe the number of emails I received from employees across the state! ”

-Employer Offering TrueConnect Loan-





EMPLOYEES

☛ Qualified employees get access to small dollar loans (from \$1000 - \$3000) that are repaid through automatic payroll deductions. The online loan application is easy to complete and employees receive a quick response.

☛ Employees do not need a credit history, but can only borrow what they can pay back with 8% of their paycheck to help insure a successful loan repayment.

☛ Payment history through payroll deduction is reported to credit bureaus, which may be positive credit building activity for employees.

☛ All TrueConnect Loan borrowers get 6 free credit counseling services from LSS Financial Choice, a federally accredited credit counseling program.

“ Thank you for recognizing the needs of your employees. The help with a loan when needed takes a lot of stress off a person, especially knowing that such a loan is being paid easily and no worry of missing a payment.
Thank you again!

-TrueConnect Borrower-



TRUECONNECT LOAN TESTIMONIALS

What Employers Say About TrueConnect Loan

“ I believe we launched the product in November 2014 and it is a “hit”. The set up was easy and the TrueConnect staff was fabulous to work with. Our organization is not involved in the process, e.g., application, application review and approval process. I have no knowledge of who has made application etc. Employees make application on line and if approved money deposit into their accounts within 24 hours. We have good relations with TrueConnect. If you have questions etc., they are very responsive. ”

– Joyce Norals, Chief Human Resources Officer, Lutheran Social Services



“ TrueConnect is Excellent. We are very pleased with this benefit program. The TrueConnect team is very responsive. ”

– Mary J. Brunner, SPHR, SHRM-SCP, IPMA-SCP, Town of Culpeper, VA



TRUECONNECT LOAN TESTIMONIALS

What Employees Tell Employers That Offer TrueConnect Loan

“ This is a good way to help out employees in hard times. Thank you for this opportunity in my time of need. ”

- Employee, City of Anaheim, CA

“ Thank you. I really appreciate the fact that you are concerned enough about your employees to get involved in such a program. ”

- Employee, Lutheran Social Services, Duluth, MN

“ It definitely came in handy. My family and I were struggling to pay our bills on time and TrueConnect rescued us. ”

- Employee, Workplace Impact, Cleveland, OH

“ Thank you for making this loan program a reality for those that truly DO need the help and are embarrassed to go to another source for that help. It is greatly appreciated!!! ”

- Employee, Eastern Municipal Water District, Perris, CA



MEMORANDUM

To: Board of Regents
Northern New Mexico College

From: Dr. Rick Bailey

Date: August 18, 2017

Re: El Rito Campus Solar Array Lease Contract

Issue

As part of an effort to revitalize the El Rito campus, Northern New Mexico College is partnering with Kit Carson Electric Cooperative to house one of its one megawatt solar arrays on the south side of the campus. The solar array will bring approximately \$200k in funding over the life of the lease, and will lower the college's electricity costs over the entire life of the program (estimated at thirty years).

Overview

The lease deal marks an agreement between Kit Carson Electric Cooperative, Guzman Energy, and Northern New Mexico College. The lease has completed final legal review by the College's legal team, in conversation with the legal teams representing KCEC and Guzman. The contract will not need approval from the New Mexico State Board of Finance because of the higher education institution exemption in the state statute (NNMC's legal advisors confirmed the exemption). We are still awaiting an appraisal of the land being contracted, so that we can prove compliance with anti-donation standards.

Recommendation

I recommend the Board of Regents approve the El Rito solar array lease contract, contingent upon the land appraisal reflecting that the lease contract is consistent with fair market values.

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into this [XX] day of August, 2017 (the "Effective Date") by and between Northern New Mexico College with an address of 921 N. Paseo de Oñate Española, New Mexico 87532 (hereinafter "Lessor"), and Syncarpha El Rito, LLC, a Delaware Limited Liability Company with an address of 250 West 57th Street, Suite 701, New York, New York 10107 ("Lessee"). Each of Lessor and Lessee is sometimes referred to herein as a "Party" and are collectively sometimes referred to herein as the "Parties".

RECITALS

- A. Lessor is the owner of land in the unincorporated community of El Rito, Rio Arriba County, New Mexico located on a parcel of land off State Highway 554 and being shown to have a parcel identification number of [XXXXXXX] and being more specifically described as lands within Section 10, Township 24 North, Range 7 East, Track 38 (the "Owner's Lot"). Lessee desires to lease a portion of Owner's Lot to Lessee, which portion is approximately 14+/- acres and is more particularly identified and described on **Exhibit A** attached hereto (the "Leased Property") for the purpose of developing and constructing an approximately 1.0+/- megawatt AC-rated solar photovoltaic electric generating system (the "Solar Power Facilities").
- B. Lessee desires to lease the Leased Property from Lessor to construct, install, own, operate and maintain the Solar Power Facilities subject to this Lease on a location within the Leased Property that is acceptable to the Lessor and Lessee.
- C. Prior to the Commencement Date of this Lease, a market rent appraisal of the Leased Property shall be conducted as described in Paragraph 9.1 below.
- D. Effective as of the Commencement Date, Lessor agrees to lease the Leased Property to Lessee for the purposes set forth in this Lease and to grant Lessee certain easements and ancillary rights, all on the terms and conditions herein contained.

ARTICLE 1 DEFINITIONS

In addition to the terms defined in the introductory Preamble hereof and in the Recitals set forth above, the following terms shall have the indicated meanings:

1.1 "Access Easement Area" means the portion of the Owner's Lot, the Leased Property and/or certain adjacent real property owned by Lessor over which the Lessee has appurtenant rights for ingress, egress, and access to and from the Leased Property pursuant to Section 7.2, as is described, depicted or mapped on **Exhibit B**.

1.2 "Affiliate" means, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with Lessee or Lessor; (ii) any Person that beneficially owns or holds ten percent (10%) or more of any class of voting securities, trustee votes or units of Lessee or Lessor, or ten percent (10%) or more of the equity interest or membership interest in Lessee or Lessor; or (iii) any Person of which Lessee or Lessor beneficially owns or holds ten percent (10%) or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Lessee or Lessor, whether through the ownership of voting securities or by contract or otherwise.

1.3 "Applicable Requirements" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and

other governmental consents, which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation (i) the Lessee's leasehold, access and easement interests in and to the Leased Property or any part thereof in connection with the Operations and (ii) the construction, operation, ownership, maintenance, repair, decommissioning and removal of the Solar Power Facilities.

1.4 "Assignee" has the meaning set forth in Section 20.1(b).

1.5 "Assign" or "Assignment" has the meaning set forth in Section 20.3.

1.6 "Commencement Date" has the meaning set for in Section 8.2(a).

1.7 "Commercial Operation Date" shall mean and shall be deemed to have occurred when: (a) the Solar Power Facilities have been completely installed, are mechanically and electrically sound, and are ready for start-up and commercial operation; (b) the mechanical tests relating to completion of the Solar Power Facilities have been conducted and the requirements with respect thereto have been satisfied in the reasonable discretion of the Lessee; (c) all Interconnection Facilities relating to the Solar Power Facilities are completed and ready for commercial operation, and the interconnecting Utility has issued a notice to operate to the Lessee in connection therewith; and (d) the Solar Power Facilities comply with all applicable Governmental Approvals and have passed all required inspections by the Utility and any applicable Governmental Authority.

1.8 "Commercial Operation Date Notice" shall have the meaning set forth in Section 8.

1.9 "Construction Easement Area" means that portion of the Owner's Lot, the Leased Property and/or certain adjacent real property owned by Lessor over which the Lessee has appurtenant rights for installation and construction of the Solar Power Facilities pursuant to Section 7.2, as is described, depicted or mapped on **Exhibit C**.

1.10 "Creditworthy" means a Person that has a net worth which equals or exceeds the net worth of Lessee measured at the time of the applicable Assignment or Sublease arising under Article 20.

1.11 "Default Rate" means a rate of interest equal to two percent (2%) plus the prime rate published from time to time in The Wall Street Journal or its successor publication, per annum.

1.12 "Easements" means the easements granted pursuant to Section 7.2 effective on the Effective Date.

1.13 "Effective Date" has the meaning set forth in the Preamble of this Lease.

1.14 "Environmental Attributes" has the meaning set forth in Section 2.6.

1.15 "Environmental Laws" means any federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees applicable to the Leased Property or the Owner's Lot now or hereinafter in effect relating to: (a) pollution; (b) the protection or regulation of human health, natural resources or the environment; (c) the treatment, storage or disposal of Hazardous Substances; or (d) the emission, discharge, Release or threatened release of Hazardous Substances into the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq. and any other Applicable Requirements that govern: (1) the existence, removal, or remediation of Hazardous Substances on real property; (2) the emission, discharge, Release, or control of Hazardous Substances into or in the environment; or (3) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Substances, each as amended, and together with all applicable regulations, orders, and binding guidance documents issued thereunder.

1.16 “Event of Default” has the meaning set forth in Section 23.1.

1.17 “First Renewal Term” shall have the meaning set forth in Section 8.1.

1.18 “First Offer Notice” shall have the meaning set forth in Article 26.

1.19 “Force Majeure” means, when used in connection with the performance of a Party’s obligations under this Lease, any act, condition or event (to the extent not caused by such Party or its Affiliates, agents, subcontractors or employees) which is unforeseeable, or being foreseeable, unavoidable and outside the reasonable control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Lease. Without limiting the meaning of the preceding sentence, the following events constitute Force Majeure to the extent that they render a Party unable to comply totally or partially with its obligations under this Lease:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, as storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, hurricanes, landslides, and fires, and objects striking the earth from space (such as meteorites);

(c) curtailment or suspension of service for the Solar Power Facilities by the Utility pursuant to the Interconnection Agreement or otherwise, or failure or unreasonable delay by the Utility or other regional transmission owner or operator to complete their activities and obligations relating to interconnecting the Solar Power Facilities in accordance with the Interconnection Agreement;

(d) acts of any Governmental Authority that materially restrict or limit Lessee’s access or any Lessee Access Parties’ access to the Leased Property or its Operations at the Leased Property; and

(e) nationwide or statewide industrial action not specific to the Solar Power Facilities nor caused by Lessee.

Notwithstanding anything to the contrary in this definition, the term Force Majeure shall not include any of the following:

(i) any act, event or condition caused by the negligence or willful misconduct of, or breach of this Lease by, the Party or any of its agents or suppliers or subcontractors claiming such act, event or condition as a Force Majeure;

(ii) the financial inability of any Party to perform its obligations under this Lease; and

(iii) any strike, walkout, or other industrial or labor action caused by any Lessee Access Parties.

1.20 “Generating Units” shall have the meaning set forth in the definition of Solar Power Facilities.

1.21 “Governmental Approvals” means all authorizations, consents, decisions, licenses, certifications, grants, registrations, exemptions, permits, certificates and approvals from any Governmental Authority.

1.22 “Governmental Authority” means any foreign, national, federal, state, county, city, regional or local government, any political subdivision thereof, or any governmental, quasi-governmental, regulatory, judicial or administrative agency, authority, commission, board or similar entity having jurisdiction over the performance of Operations, the Solar Power Facilities or its operations, the Leased Property or otherwise over any Party.

1.23 “Green Tag Reporting Rights” has the meaning set forth in Section 2.6.

1.24 “Hazardous Substances” means and includes any substance that is or contains (a) any “hazardous substance” as now or hereafter defined in § 101(14) of CERCLA; (b) any “hazardous waste” as now or hereafter defined in RCRA; (c) any toxic substance now or hereafter regulated by TSCA; (d) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (f) polychlorinated biphenyls; (g) lead and lead-containing materials; (h) any additional substance, material or waste: (i) the presence of which on or about the Leased Property (1) requires reporting, investigation or remediation under any Environmental Laws, (2) causes or threatens to cause a nuisance on the Leased Property or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Leased Property or any adjacent area or property, or (3) which, if it emanated or migrated from the Leased Property, could constitute a trespass, or (ii) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws.

1.25 “Holdover Rent” has the meaning set forth in Section 9.2.

1.26 “Improvements” means all facilities, apparatus, systems, structures, equipment, machinery, fencing, materials and personal property of every kind and character that are constructed, installed and/or placed on the Leased Property, or on, above or under the Leased Property by or on behalf of Lessee during the Lease Term, including, without limitation Generating Units and Interconnection Facilities.

1.27 “Initial Lease Term” shall have the meaning set forth in Section 8.1.

1.28 “Interconnection Agreement” means the interconnection agreement to be entered into by the Lessee and the Utility with respect to interconnection of the Solar Power Facilities.

1.29 “Interconnection Facilities” shall have the meaning set forth in the definition of Solar Power Facilities.

1.30 “Land Records” means the Official Land Records of Rio Arriba County, New Mexico.

1.31 “Lease” means this Lease Agreement as amended from time to time in accordance with its terms.

1.32 “Lease Term” shall have the meaning set forth in Section 8.1.

1.33 “Leased Property” shall have the meaning set forth in the Recitals.

1.34 “Leasehold Mortgagees” has the meaning set forth in Section 20.1.

1.35 “Lender” shall have the meaning set forth in Section 20.1.

1.36 “Lessee” shall have the meaning set forth in the preamble.

1.37 “Lessee Access Parties” means the Lessee and its contractors, consultants and Lenders and other financing sources and each of their respective agents, representatives, subcontractors, consultants, employees and invitees.

1.38 “Lessor” shall have the meaning set forth in the preamble.

1.39 “Lessor Default” has the meaning set forth in Section 23.3.

1.40 “Lessor Indemnified Party” has the meaning set forth in Section 17.1.

1.41 “Liabilities” has the meaning set forth in Section 17.1.

1.42 “Memorandum of Lease” shall mean the Memorandum of Lease attached hereto as **Exhibit E**.

1.43 “Non-curable defaults” has the meanings set forth in Section 21.2(b).

1.44 “Operating Year” shall mean the period from the Rent Commencement Date to the date that is twelve (12) months thereafter, and for the remainder of the Lease Term, each subsequent twelve (12) month period thereafter.

1.45 “Operations” shall have the meaning set forth in Section 2.1.

1.46 “Owner’s Lot” shall have the meaning set forth in the Recitals.

1.47 “Party” and “Parties” shall mean the Lessee and/or the Lessor.

1.48 “Permits” shall mean applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Solar Power Facilities, the production and delivery of energy and Environmental Attributes, or any other transactions or matter contemplated by this Lease (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

1.49 “Person” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

1.50 “Purchase Agreement” shall have the meaning set forth in Article 26.

1.51 “RCRA” means the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.) or any regulations promulgated under RCRA.

1.52 “Removal Obligations” means removal from the Leased Property of the Solar Power Facilities and all other Improvements, and any personal property owned or leased by Lessee.

1.53 “Removal Period” means 120 days after the termination or expiration of this Lease.

1.54 “Renewable Energy Incentives” has the meaning set forth in Section 2.6.

1.55 “Rent” has the meaning set forth in Section 9.1.

1.56 “Rent Commencement Date” means the first day of the month immediately following the month in which the Commercial Operation Date occurs.

1.57 “Renewal Term” means the First Renewal Term and/or the Second Renewal Term and/or the Third Renewal Term.

1.58 “Second Renewal Term” shall have the meaning set forth in Section 8.1.

1.59 “Solar Power Facilities” means: (a) solar modules, solar inverter systems and solar power generating facilities (including associated racking, foundations, support structures, braces and other structures and equipment), and other power generation facilities to be operated in conjunction with solar array installations, in each case of any type or technology (collectively, “Generating Units”); (b) electrical transmission facilities installed and owned by Lessee, including overhead and underground transmission, electrical distribution and collector lines, wires and cables, conduit, footings, foundations, poles, substations, interconnection and/or switching facilities, circuit breakers, transformers, transformer and inverter pads, and energy storage facilities (collectively, “Interconnection Facilities”); (c) overhead and underground control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables, conduit and poles; (d) meteorological stations and solar energy measurement equipment; (e) erosion control facilities; (f) control buildings, control boxes and computer monitoring hardware, maintenance and storage units; (g) Utility installations; (h) laydown areas and maintenance yards; (i) signs; (j) fences and other safety and protection facilities; and (k) other improvements, facilities, appliances, apparatus, materials, articles, components, raw materials, supplies, parts, systems, structures, machinery and equipment in any way related to or associated with generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity.

1.60 “Sublessee” has the meaning set forth in Section 20.1.

1.61 “Substantial Alteration” has the meaning set forth in Section 20.1.

1.62 “Syncarpha” has the meaning set forth in Section 20.1.

1.63 “Third Party Purchaser” has the meaning set forth in Article 26.

1.64 “Third Renewal Term” has the meaning set forth in Section 8.1.

1.65 “Transmission Facilities” means underground or overhead electric transmission and distribution lines, wires, poles, towers, electrical transformers, substations, interconnection and switching equipment and facilities, electricity converters, electricity and energy storage equipment and facilities, related foundations, and pads and footings, access roads, and operation and maintenance facilities, and other related facilities and equipment, for the collection, transmission, distribution, storage and sale of electric power generated on the Leased Property and on other land.

1.66 “TSCA” means the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.) or any regulations promulgated under TSCA.

1.67 “Utility” means Kit Carson Electric Cooperative and its successors and assigns.

1.68 “Utility Easement Area” means that portion of the Owner’s Lot, the Leased Property and/or certain adjacent real property owned by Lessor over which the Lessee has appurtenant rights for the installation, construction, operation and maintenance of electrical utility infrastructure (including, the installation of at least four (4) above-ground standard Utility-owned poles as shall be determined by the Utility required for the Solar Power Facilities pursuant to Section 7.2, as may be described, depicted or mapped on **Exhibit D**.

1.69 “Work” has the meaning set forth in Section 22.3.

ARTICLE 2 PURPOSE OF LEASE

2.1 Operations. Pursuant to this Lease, Lessee shall have sole and exclusive possession of the Leased Property, subject to any limitations contained in this Lease, during the Lease Term for the following purposes (collectively, “Operations”):

(a) To use, convert, maintain and capture solar insolation (sunlight) over and across the Leased Property and to convert solar energy derived therefrom into electrical energy, and collecting and transmitting the electrical energy so converted;

(b) Constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring the Solar Power Facilities in accordance with all applicable Governmental Approvals;

(c) Vehicular and pedestrian ingress, egress and access to and from Solar Power Facilities on, over and across the Leased Property by means of the Easements;

(d) Removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant or other vegetation on the Owner’s Lot and Leased Property that could obstruct, interfere with or impair the Solar Power Facilities or the use of the Leased Property by Lessee;

(e) Solely in the strictest adherence to Applicable Requirements, an exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis of or on the Leased Property as Lessee deems necessary, useful or appropriate; and

(f) Undertaking any other activities by Lessee or any third party authorized by Lessee which are necessary in connection with, or incidental to any of the foregoing purposes described above, including any and all other activities related to, necessary or contemplated by an Interconnection Agreement entered into by Lessee, and all contracts or documents entered into in connection therewith, or with the installation of the Solar Power Facilities, and including equipment, procurement and construction contracting with a qualified general contractor and conducting surveys and environmental, biological, cultural and other tests and studies. Without limiting the generality of the foregoing, the Parties recognize that (i) power generation technologies are improving at a rapid rate and that, Lessee may (but shall not be required to) from time to time replace existing Generating Units on the Leased Property with newer model Generating Units and (ii) the Operations may be accomplished by Lessee, or one or more third parties authorized by Lessee; provided, however that the use of such third parties shall not relieve Lessee of its obligations and responsibilities hereunder, and Lessee shall be responsible for the actions and performance of such third parties.

2.2 Exclusive Rights. Subject to the provisions of Section 2.1 and any limitations contained in this Lease, Lessee shall have the exclusive right to develop and use the Leased Property for Operations and to convert all of the solar resources of the Leased Property and, during the Lease Term, Lessor shall not sell, partition, finance, mortgage, assign, or encumber the Leased Property in any way that could materially interfere with the rights granted to the Lessee Access Parties hereunder, except as provided for in Section 20.3 and in accordance with Article 25.

2.3 Access.

(a) During the Lease Term, and subject to the provisions of Section 2.1 and this Section 2.3(a), Lessor shall grant the Lessee Access Parties rights of ingress and egress to and from the Leased Property in accordance with and subject to the provisions of this Lease and the Easements and Lessor shall not grant any rights in the Leased Property purporting to permit Lessor or any other Person to: (i) conduct business, activities or other operations on the Leased Property in derogation of Lessee’s sole and exclusive right to conduct Operations on the Leased Property; or (ii) do or perform any other act relating to, nor undertake any other use of, the Leased Property other than as may be required under this Lease and Applicable Requirements. All Lessee Access Parties, without exception, shall provide Lessor prior to gaining ingress to the Leased Property under this Lease with evidence of Commercial General

Liability Insurance on an occurrence basis, including property and operations, personal injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with limits of not less than two million (\$2,000,000) per occurrence, four million (\$4,000,000) aggregate, which policy will name the Lessor as an additional insured.

(b) Without the prior written consent of Lessee and except as many be required under Applicable Requirements or law, Lessor shall not: (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by reason of any Applicable Requirements or contract with regard to the Leased Property, including without limitation any environmental regulation, land use ordinance or zoning regulation, with respect to setback requirements, noise limitations or other restrictions and conditions respecting the placement of Solar Power Facilities on parcels adjacent to or in the vicinity of the Leased Property that are not owned by Lessor; or (ii) conduct operations or business, nor grant, confirm, acknowledge, recognize or acquiesce in any right claimed by any other Person to conduct operations or business, on the Leased Property whether arising in judicial proceedings or otherwise and Lessor agrees to give Lessee notice of any such claims or proceeding with respect to such claims, and if permissible by law to cooperate with Lessee in resisting and disputing such claims. Lessor shall cooperate with Lessee Access Parties and each Sublessee in connection with its Operations and, upon request by Lessee, shall make available to Lessee copies of all reports, agreements, surveys, plans and other records of Lessor that relate to the feasibility of solar energy development on the Leased Property.

(c) During the Lease Term, Lessee shall grant the Lessor, its officers, delegated representatives, consultants and agents rights of entry onto the Leased Property at reasonable times and upon reasonable prior written notice to Lessee in order to inspect the Leased Property and the Solar Power Facilities or to access Lessor's improvements and facilities on or near the Leased Property. Under emergency conditions, Lessor may access without prior written notice to Lessee but shall notify Lessee immediately after access of the reason for access under emergency circumstances. In connection therewith, Lessor hereby acknowledges: (i) the Solar Power Facilities are electricity generating facilities and may be hazardous to Persons unaccustomed to being in or around such facilities; (ii) the Solar Power Facilities are precisely engineered facilities and may easily be disturbed by conduct or activities of Persons coming into proximity therewith; (iii) in the course of conducting any such inspection, Lessor shall not disturb, interfere with, disrupt or damage, in whole or in part, any of the Solar Power Facilities, Interconnection Facilities or Transmission Facilities; and (iv) Lessor, on its behalf, and on behalf of any such officer, consultant, representative or agent releases and discharges Lessee from any and all liability of any kind for loss or injury suffered by Lessor or any such Person which shall occur during any such inspection, it being acknowledged and agreed as of the Effective Date that Lessor shall bear all risks associated with such inspections. Lessor also acknowledges and agrees that any inspection undertaken pursuant to this Section 2.3(c) must be conducted by Lessor, its officers, consultants, representatives or agents in the company of a designated representative of Lessee. Lessor shall provide Lessee with at least seven (7) days' notice in writing of a proposed inspection date and time. If Lessee chooses not to attend the inspection, then Lessor may conduct the inspection in the absence of a designated representative of Lessee. Lessor may also conduct an inspection without notice and in the absence of a designated representative of Lessee in the event of an emergency, provided that Lessor provides notice to Lessee of the occurrence of the inspection and the nature of the emergency promptly after the inspection.

2.4 Security. Lessee, at its expense, shall be solely responsible for the security and protection of the Solar Power Facilities, including the Interconnection Facilities, once installed on the Leased Property.

2.5 Third-Party Interconnection. Lessor acknowledges that Lessee shall be required to install, or desire to be installed, Interconnection Facilities on the Leased Property, Owner's Lot and/or on portions of real property that are adjacent to the Leased Property that are owned by the Lessor, and further that all or any portion of those Interconnection Facilities may be constructed, operated and owned by the Utility, transmission providers or other entities engaged in the electrical transmission industry. Accordingly, upon receipt of written notice from the Lessee stating that any such utility, transmission provider or other entity shall so construct, operate and own such Interconnection Facilities, Lessor shall reasonably cooperate and negotiate to execute and deliver, together with the Lessee or the Utility as

applicable, one or more forms of utility easement or other form of easements on that portion of the Leased Property, Owner's Lot and/or on such adjacent real property, as applicable, affected by such Interconnection Facilities in favor of the Utility, transmission provider or other entity so as to permit construction, operation and ownership of the Interconnection Facilities on the Owner's Lot and/or on such adjacent real property, as applicable, at the sole cost, expense and risk of the grantee of such easement. Lessee acknowledges and agrees that such easement or license shall be in form and substance satisfactory to all parties and suitable for such Interconnection Facility or utility installation and shall be for a term of years coterminous with the Lease Term (or shorter or longer as may be required by public utilities, transmission providers or other entities engaged in the electrical transmission industry). Lessor may only seek such compensation, if any, as is required by law for a governmental entity to seek for the additional easements described in this paragraph. Lessor further acknowledges that an Interconnection Facility or utility installation may be required to be constructed and operated by Lessee or by public utilities, transmission providers or other entities engaged in the electrical transmission industry on the Leased Property, Owner's Lot or on adjacent real property, as applicable.

Lessee shall indemnify, defend and hold harmless, collectively and individually, the Lessor Indemnified Party (defined in Section 17.1), from and against any and all Liabilities (defined in Section 17.1) arising out of, relating to or incurred in connection with, or which may be asserted against the Lessor Indemnified Party, or which the Lessor Indemnified Party may incur or suffer as a result of: (a) the construction, operation or ownership of any such Interconnection Facilities; (b) the conduct or omissions of Lessee, the Utility, transmission providers or other entities engaged in the electrical transmission industry, in connection with or arising out of the construction, operation or ownership of any such Interconnection Facilities; provided that any indemnity obligation set forth in this paragraph shall not apply to the extent of any Liabilities caused in substantial part by an act or omission of any Lessor Indemnified Party.

2.6 Environmental Attributes. Lessee shall have all right, title and interest in and to all RECs and all other "Environmental Attributes" and "Renewable Energy Incentives" (as such terms are defined herein), and other items of whatever nature which are available as a result of solar energy being produced from the Solar Power Facilities at the Leased Property. If any Environmental Attributes, Renewable Energy Incentives or other items related to the Leased Property are initially credited or paid to Lessor, Lessor will cause such Environmental Attributes, Renewable Energy Incentives and other items to be assigned or transferred to Lessee without delay. Lessor will cooperate with Lessee in Lessee's efforts to meet the requirements for any certification, registration, or reporting program relating to Environmental Attributes or Renewable Energy Incentives. As used herein (a) "Environmental Attributes" means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Solar Power Facilities, or otherwise attributable to the generation, purchase, sale or use of energy from or by the Solar Power Facilities, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting "early action" emissions reduction, or Applicable Requirements involving or administered by the Clean Air Markets Division of the Environmental Protection Agency (or successor agency), or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, any Green Tag Reporting Rights to such Environmental Attributes, and any eligibility for a renewable portfolio standard or comparable standard or program, including, without limitation, solar renewable energy credits arising out of and state or federal legislation or regulation; (b) "Renewable Energy Incentives" means: (i) any federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Power Facilities (including credits under Sections 38 and 45K of the Internal Revenue Code of 1986, as amended); (ii) any investment tax credits and any other tax credits associated with the Solar Power Facilities (including credits under Sections 38 and 48 of the Internal Revenue Code of 1986, as amended); (iii) any state, federal or private cash payments or grants relating in any way to the Solar Power Facilities or the output thereof or payments or grants made in lieu of any tax credit; (iv) state, federal or private grants or other benefits related to the Solar Power Facilities or the output thereof; and (v) any other form of incentive that is not an Environmental Attribute that is available with respect to the Solar Power Facilities; and (c)

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by Applicable Requirements and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program. In no event will the Rent payable under this Lease result in a payment from Lessee to Lessor in respect of, measured by, or in any manner related to such Environmental Attributes or Renewable Energy Incentives.

2.7 Neither Transfer nor Encumbrances by Lessor. To the extent permissible by law, the Solar Power Facilities including the Improvements and the Transmission Facilities, and any other equipment or personal property associated therewith may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by, through or under Lessor with Lessor’s fee interest or leasehold rights to the Leased Property. To the extent permissible by law, Lessor shall not cause or permit the Solar Power Facilities including the Improvements, the Transmission Facilities, and any equipment or personal property associated therewith or any part thereof to become subject to any lien, encumbrance, mortgage, pledge, claim, levy or attachment arising by, under or through Lessor. To the extent permissible by law, lessor hereby waives any and all rights of distraint and Lessor’s liens, whether created by Applicable Requirements, common law, or otherwise, in and to Solar Power Facilities including the Improvements and the Transmission Facilities, and any equipment or personal property associated therewith of Lessee.

ARTICLE 3 INSURANCE

3.1 [INTENTIONALLY DELETED].

3.2 Lessee’s Insurance. Commencing as specified below and continuing thereafter during the Lease Term, Lessee shall procure and maintain at its sole costs and expense, and provide evidence to Lessor of, the following insurance:

(a) On the Effective Date, Commercial General Liability Insurance on an occurrence basis, including property and operations, personal injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with limits of not less than two million (\$2,000,000) per occurrence, four million (\$4,000,000) aggregate, which policy will name the Lessor as an additional insured;

(b) Commencing on the Commencement Date, builders all risk (non-reporting form) coverage, which insurance shall name Lessor an additional insured;

(c) On the Effective Date, Umbrella Commercial General Liability insurance of five million dollars (\$5,000,000), which insurance shall name Lessor as a named insured; and

(d) As of the Commercial Operation Date, Property Insurance for the full replacement cost of the Solar Power Facilities.

3.3 Certain Endorsements. The Commercial General Liability Insurance referenced in Section 3.2 shall be endorsed to Lessor as an additional insured and shall be primary and noncontributory with Lessor’s insurance. Lessee shall deliver to Lessor certificates of all insurance required under Section 3.2 reflecting evidence of required coverage at the times stated in Section 3.2. All insurance required under Section 3.2 shall be issued by insurers licensed to do business in the state in which the Leased Property is located and which are rated A:VII or better by Best’s Key Rating Guide and shall be endorsed to provide at least thirty (30) days prior notification of cancellation or material change in coverage to Lessor. Lessor agrees that the name of any Leasehold Mortgagee, as hereinafter defined, may be added to the loss payable endorsement of any and all insurance policies required to be carried by Lessee hereunder.

3.4 Lessor’s Insurance. During the Term, Lessor at its cost shall maintain insurance of the type and in the amount(s) customarily maintained by the Lessor against acts, omissions or negligence

by Lessor or any of its tenants, agents, contractors, servants, employees, subtenants, licensees or invitees on the Owner's Lot.

3.5 Contractors and Subcontractors. Lessee's contractors shall be deemed to have adequate insurance coverage for purposes of Section 3.2 if they have insurance coverage that is equivalent to that Lessee is obligated to provide under Section 3.2.

ARTICLE 4 WAIVER OF NUISANCE

Lessor has been informed by Lessee and understands that the installation of the Solar Power Facilities on the Leased Property may potentially result in some reasonable nuisance to the Lessor such as higher noise levels than currently occur at the Leased Property during installation of the Solar Power Facilities and the visual impact of the Solar Power Facilities during the Lease Term. Lessor hereby accepts such reasonable nuisance and waives any right that Lessor may have to object to such nuisance (and Lessor individually releases Lessee from any claims Lessor may have with respect to any such nuisance); provided however, that the foregoing waivers and releases by Lessor shall not apply to and shall not be raised by Lessee as a defense in regard to claims made against Lessor by any third party that asserts claims or damages arising out of nuisance relating to the Solar Power Facilities. Lessee covenants and agrees that it shall comply and cause all contractors to comply with all Applicable Requirements pertaining to acceptable noise levels during installation of the Solar Power Facilities.

ARTICLE 5 LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Lessee's Authority. Lessee hereby represents and warrants that Lessee has the full power and authority to enter into this Lease and has obtained all required consents or approvals in connection therewith.

5.2 Use. Lessee covenants to use the Leased Property for the Operations including without limitation: (a) the construction, installation, use, operation, repair, maintenance, modification, decommissioning, removal and replacement of the Generating Units and appurtenances thereto (including the Improvements and the Transmission Facilities); (b) the production of electricity and storage of equipment and materials relating to the Generating Units and appurtenances thereto (including the Improvements and the Transmission Facilities); (c) all other Operations reasonably necessary or ancillary in connection with such uses; and (d) and any and all other activities related to any of the foregoing, including, without limitation, any and all uses necessary or contemplated by any equipment, procurement and construction agreement relating to installation of the Solar Power Facilities, the Interconnection Agreement and all contracts or documents entered into in connection therewith.

ARTICLE 6 LESSOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Lessor's Authority. Lessor represents and warrants that it has the full power and authority to enter into this Lease and has obtained all required consents or approvals in connection therewith.

6.2 Lessor Ownership of the Owner's Lot; No Liens. Lessor represents and warrants to Lessee that: (a) the Owner's Lot is not encumbered by or the subject of any liens, mortgages, options, tax liens or other forms of encumbrance of any Person; and (b) Lessor holds fee simple title to the Owner's Lot.

6.3 Condemnation. Lessor represents and warrants to Lessee that: (a) there is no pending or, to Lessor's knowledge, threatened condemnation proceedings or other governmental, municipal, administrative or judicial proceedings affecting the Owner's Lot; and (b) there are no agreements with any third parties (including, but not limited to, any other leases, use or occupancy agreements, easements, licenses or other rights of possession or use, or any option for any of the foregoing)

that could interfere with, conflict with, prohibit or restrict Lessee's ability, or the ability of any Lessee Access Parties to enter upon and use the Leased Property as contemplated by this Lease.

6.4 Legal Proceedings. Lessor represents and warrants that, to Lessor's knowledge, there are no pending or threatened actions or legal proceedings affecting the Owner's Lot.

6.5 Permits. Lessor represents and warrants that Permits are not required to be obtained by the Lessor in regard to (i) the execution and delivery by the Lessor of this Lease, (ii) the performance by Lessor of Lessor's obligations under this Lease, and (iii) the grant of the utility easements and Easements to Lessee or to the Utility or transmission provider pursuant to Section 2.5, Article 7 and Article 19 of this Lease.

6.6 Other Representations and Warranties. Lessor represents and warrants that Lessor shall not make any improvements to the Owner's Lot during the Lease Term without the express, prior written consent of Lessee which shall not be unreasonably withheld.

6.7 "AS IS" "WHERE IS" Condition. Except for Lessor's representations and warranties expressly provided in this Lease, Lessee acknowledges that it is leasing the Leased Property in its AS IS, WHERE IS condition, without any representation, warranty, or obligation of Lessor, express or implied whatsoever concerning the condition of the Leased Property, title thereto, zoning, environmental status, or any other matter in any way related to the Leased Property or the proposed Solar Power Facilities.

ARTICLE 7 LEASE AND EASEMENTS

7.1 Lease.

(a) Lease. Effective as of the Effective Date and upon the terms and subject to the conditions set forth herein, Lessor does hereby demise and lease unto Lessee, and Lessee does hereby take and lease from Lessor the Leased Property. Appurtenant to Lessee's rights to the Leased Property is the non-exclusive right, subject to the terms set forth herein, to use each of the Access Easement Area, Construction Easement Area, and Utility Easement Area for its specified purpose in accordance with the respective Easements.

(b) **Exhibit A** attached to this Lease as of the Effective Date includes the Parties' initial approximation of the Leased Property. Lessee shall be permitted to propose to Lessor amendments to **Exhibit A** that set forth an updated description of and drawings indicating the Leased Property. One such amendment shall be submitted before commencement of installation work on the Solar Power Facilities and another shall be submitted upon completion of the Solar Power Facilities that shall indicate the as-built location of the Solar Power Facilities and all Improvements. Lessor shall review such proposed amendments to **Exhibit A** and approve such amendments in a written consent executed by Lessee and Lessor. Lessor's approval shall not be unreasonably withheld or delayed; provided, however, in the event the Lessor does not provide such approval, the Parties shall be obligated to negotiate in good faith in order to reach agreement on the form of such proposed amendments.

7.2 Easements.

(a) Grant. Effective as of the Effective Date, Lessor hereby grants to Lessee the easements more particularly specified on **Exhibit F** attached hereto (the "Easements") which easements pertain to the Access Easement Area, the Construction Easement Area and the Utility Easement Area described on **Exhibit B, Exhibit C, and Exhibit D** attached hereto. The rights, interests and entitlements created in favor of Lessee pursuant to this Section 7.2 and or this Lease are and shall at all times be for the benefit of the Lessee Access Parties and their permitted successors and assigns.

(b) No Interference. Notwithstanding that the Easements may be non-exclusive, Lessor warrants, covenants and agrees that it will not grant any easements, licenses, rights or other interests

of any kind to Persons other than Lessee within areas encumbered by the Easements (the Access Easement Area, the Construction Easement Area and the Utility Easement Area) that could interfere in any way with the rights granted to Lessee hereunder and under the Easements. Lessor shall not tamper with or disturb any Improvements of Lessee located in the Access Easement Area, the Construction Easement Area and the Utility Easement Area or use such areas in a manner that interferes with Lessee's Operations. Any easements, licenses, rights or other interests of any kind granted by Lessor subsequent to the Effective Date that encroach upon the Easements granted hereunder shall be subordinate thereto and subject to Lessee's reasonable design, construction, operation and maintenance standards so as not to damage the equipment, facilities and systems located or constructed therein or thereon or interfere with Lessee's Operations.

(c) Termination of Easements. Subject to the provisions of Section 2.5, all easements granted hereunder to Lessee, including the Easements, shall terminate automatically upon expiration or earlier termination of the Lease Term. Lessee, at no cost to Lessor, shall reasonably cooperate with Lessor to evidence, in recordable form, the termination of any recorded Easements.

ARTICLE 8 LEASE TERM; EXPIRATION AND TERMINATION

8.1 Lease Term.

(a) The Initial Lease Term shall commence on the Effective Date and shall be for an initial term (without giving effect to any Renewal Term) that expires thirty (30) years from the Commercial Operation Date. Subject to Lessor's written acceptance of extension request in accordance with Section 8.1(b), Lessee shall have the right and option, by giving written notice to Lessor at least six (6) months prior to the end of (i) the Initial Lease Term, to request the extension of the term of this Lease for five (5) years (the "First Renewal Term"); (ii) the First Renewal Term, to request the extension of the term of this Lease for five (5) years (the "Second Renewal Term"); and (iii) the Second Renewal Term, to request the extension of the term of this Lease for five (5) years (the "Third Renewal Term"); provided, however, that there is no outstanding Event of Default by Lessee at either the time of exercise or the commencement of any Renewal Term. The Initial Lease Term and the First Renewal Term, Second Renewal Term and the Third Renewal Term, if applicable, collectively being the "Lease Term" or "Term" of this Lease.

(b) Notwithstanding the provisions of Section 8.1(a), Lessor's acceptance of Lessee's notice and request for a First Renewal Term, a Second Renewal Term or a Third Renewal Term shall be expressly conditioned upon the following:

(i) Lessee shall provide to Lessor with the notice and request for a First Renewal Term, a Second Renewal Term or a Third Renewal Term a certified appraisal of the Leased Property in form and substance reasonably satisfactory to Lessor under which the fair market value rent for the Leased Property for such First Renewal Term, a Second Renewal Term or a Third Renewal Term, as applicable is set forth; and

(ii) Lessee presents a written amendment to this Lease to Lessor, signed by Lessee under which Rent payable for the First Renewal Term, a Second Renewal Term or a Third Renewal Term, as applicable, is stated as equal to the fair market rent contained in the appraisal required under Section 8.1(b)(i) above.

Upon Lessor's receipt of the documentation required under this Section 8.1(b) in form and substance reasonably satisfactory to Lessor, and upon Lessor's written decision to accept Lessee's notice(s) and request(s), Lessor shall counter-execute the amendment to Lease referred to in Section 8.1(b)(ii) and return to Lessee a fully executed copy thereof. Upon execution and delivery of such amendment, the First Renewal Term, a Second Renewal Term or a Third Renewal Term, as applicable, shall arise under this Lease, as amended by the applicable amendment.

8.2 Expiration and Termination. The Lease Term shall end at 11:59 p.m., local time on the last day of the Lease Term, or earlier termination thereof as provided herein.

(a) Commencement Date. The obligation of Lessor to deliver possession of the Leased Property to Lessee and of Lessee to accept possession of the Leased Property and otherwise be liable for performance of the obligations of Lessee set forth herein shall commence on the date when the conditions precedent set forth below in this Section 8.2 have been satisfied or waived by Lessee (such date is the “Commencement Date”) provided, however, that the obligation to pay Rent shall not arise until the Rent Commencement Date.

(i) Lessee shall have executed and delivered power purchase and sale agreements or tariff-based purchase and sale arrangements with the Utility relating to the Solar Power Facilities on terms reasonably satisfactory to Lessee which result in all electricity produced by such Solar Power Facility being sold to such purchasers;

(ii) Lessee and the Utility shall have executed and delivered an Interconnection Agreement pertaining to interconnection of the Solar Power Facilities to the Utility’s local distribution Solar Power Facilities;

(iii) Lessee shall have received all other Environmental Attributes, Renewable Energy Incentives and Green Tax Reporting Rights pertaining to the Solar Power Facilities have been registered and applied in the name of Lessee and are in good standing;

(iv) Lessee shall have received all grant approvals, site permits (other than building and electrical Permits), special Permits, and related Governmental Approvals necessary for the construction, installation, interconnection, operation and maintenance of the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements, without material adverse conditions, and all periods of appeal or challenge of such Permits or other Governmental Approvals provided under Applicable Requirements have expired without the initiation by any Person of any such appeal or challenge;

(v) Lessee shall have procured, at its sole cost and expense a Phase I Environmental Assessment Report, an ATLA Policy of Leasehold Title insurance and, an ATLA survey of the Leased Property (whereon all Easements are depicted and described) each of which shall not reveal material adverse conditions that, in the commercially reasonable judgment of Lessee, will impair the further development, installation, operation or removal of the Solar Power Facilities;

(vi) No proceeding has been initiated by any Person, including without limitation any Governmental Authority in any forum under or through which such Person challenges, seeks to restrain or prevent, or seeks in any way any form of relief that would prevent, disrupt, delay or alter Lessee’s development, installation, construction, operation and maintenance of the Solar Power Facilities and any and all Interconnection Facilities or Transmission Facilities;

(vii) Lessee and the Owner shall have executed and delivered into escrow with the Lessor’s attorneys pending achievement of all other conditions precedent set forth in this Section 8.2 the Easements in recordable form and mutually satisfactory to Lessee and Lessor

8.3 Commercial Operation Date Notice. Lessee shall provide written notice to Lessor that the Solar Power Facilities have been commissioned and is ready to commence commercial operation in accordance with the Commercial Operation Date not less than ten (10) business days prior to such date (the “Commercial Operation Date Notice”).

ARTICLE 9 RENT

9.1 Rent. Commencing on the Rent Commencement Date and continuing thereafter in and for each Operating Year during the Lease Term, Lessee shall pay to Lessor, annual rent in an amount set forth in Schedule A (in each Operating Year, the “Rent”), in equal semi-annual installments for each semi-annual period arising during the Lease Term in advance; *provided however*, the Rent for any Operating Year after the Initial Lease Term shall only be due and payable if the Lessee has exercised its option to extend the Lease Term, and Lessor has accepted in writing, for the First Renewal Term, the Second Renewal Term and the Third Renewal Term in accordance with Section 8.1. For purposes of this Lease, the first “semi-annual period” shall mean the first day of the first month for the six-month period immediately following the Rent Commencement Date. By way of example, if the Rent Commencement Date is June 9, then the Rent payment dates shall be July 1 and January 1. The rent described herein shall be a fair market value rent for the uses described in this Lease, as supported in a written, certified appraisal delivered to Lessor prior to the Effective Date. The appraiser shall be mutually agreed upon in writing by the parties prior to commencement of the appraisal.

9.2 Holdover Rent. If (a) Lessee remains in possession of the Leased Property following the expiration of the Lease Term (other than in order to complete the Removal Obligations) or (b) fails to complete the Removal Obligations within the Removal Period, Lessee shall continue to pay Rent to Lessor to the extent that Lessee continues to operate the Solar Power Facilities and receive any revenue whatsoever in connection therewith, for the period from the expiration of the Lease Term through the completion of its Removal Obligations and surrender of the Leased Property to Lessor, at the Rent in effect immediately prior to the expiration of any such term plus five percent (5%) of such amount (the “Holdover Rent”). Lessee’s failure to complete its Removal Obligations and surrender the Leased Property to Lessor by the end of the Removal Period shall not constitute a lease extension or Lessor agreement to continue leasing to Lessee, who shall be a tenant at sufferance only. No Holdover Rent shall be payable by Lessee to Lessor if Lessee ceases operation of the Solar Power Facilities on or prior to the expiration of the Lease Term and uses the Removal Period solely for the purpose of completing the Removal Obligations.

ARTICLE 10 CONSTRUCTION

10.1 Construction. Lessee shall construct the Solar Power Facilities and any Interconnection Facilities or Transmission Facilities (or cause the Solar Power Facilities and any Interconnection Facilities or Transmission Facilities to be constructed) consistent with industry standards and in accordance with Applicable Requirements. Lessor agrees to cooperate with Lessee in Lessee’s applications for Governmental Approvals necessary to permit the construction, installation, use, operation, repair, maintenance, modification, decommissioning, removal and replacement of the Solar Power Facilities and any Interconnection Facilities or Transmission Facilities. Lessor shall receive no additional compensation for such cooperation, but Lessee shall pay all fees and costs associated with those applications, including Lessor’s reasonable attorneys’ fees.

10.2 Liens. If any Person hired or retained by or under contract with Lessee or its contractors, or if any judgment creditor, mortgagee, governmental authority or any other Person making a claim against Lessee shall file or perfect a lien against Lessor’s fee interest in the Leased Property or any portion thereof, Lessee shall, within thirty (30) days after receiving notice of the filing thereof, discharge such lien by bond or otherwise and shall indemnify, protect and defend Lessor against all losses or expenses in connection therewith, including reasonable attorneys’ fees. If any Person hired or retained by or under contract with Lessor or its contractors or if any judgment creditor, mortgagee, governmental authority or any other Person making a claim against Lessor shall file or perfect a lien against all or any portion of the Leased Property that would impact the Solar Power Facilities, the Interconnection Facilities or Transmission Facilities, or the Easements, Lessor shall within thirty (30) days after receiving notice of the filing thereof, discharge such lien by bond or otherwise and shall indemnify, protect and defend Lessee against all losses or expenses in connection therewith, including reasonable attorneys’ fees.

ARTICLE 11 MAINTENANCE AND REPAIR

During the Lease Term, Lessee shall, at its sole cost, maintain and repair the Leased Property, the Interconnection Facilities (if owned by Lessee and not be a public utility or transmission service provider),

the Solar Power Facilities and the Transmission Facilities (if owned by Lessee and not be a public utility or transmission service provider) consistent with industry standards and, in all material respects, in accordance with Applicable Requirements and Lessee shall be solely responsible for maintaining and keeping the foregoing in good order and condition.

ARTICLE 12 TITLE TO THE SOLAR POWER FACILITIES

Lessor (including any mortgagee of Lessor) shall have no rights in or to the Solar Power Facilities, the Interconnection Facilities, the Transmission Facilities, or any appurtenances thereto, and the Solar Power Facilities, the Interconnection Facilities, the Transmission Facilities, and all appurtenances thereto shall be solely the personal property of Lessee; provided that if any portion of the Interconnection Facilities or Transmission Facilities are owned by a third party, such portion of the Interconnection Facilities or Transmission Facilities shall be solely the personal property of such third party. At no time shall the Solar Power Facilities, the Interconnection Facilities, the Transmission Facilities, and all appurtenances thereto or any portion thereof be a fixture or be deemed a permanent improvement or any other character of property that would attach to the Leased Property or give Lessor or any mortgagee of Lessor any rights thereto. Lessor shall use commercially reasonable efforts to obtain an acknowledgment from each mortgagee of Lessor with any interest in the Leased Property that the Solar Power Facilities (and all equipment and materials located at or used in connection with the Solar Power Facilities, including the Interconnection Facilities or Transmission Facilities) is the personal property of Lessee (or a third party, to the extent applicable), and not a fixture, a permanent improvement or any other character of property that would subject the Solar Power Facilities, the Interconnection Facilities or Transmission Facilities to any lien or security interest that any mortgagee of Lessor may have on or with respect to the land.

ARTICLE 13 NO INTERFERENCE

13.1 Lessor Agreements. As of the Effective Date Lessor shall not enter into any agreements, leases (including any renewals thereof), easements, or any other arrangements for rights to or for the Leased Property that could adversely affect the Operations, Leased Property, the Easements or the ownership or operation of the Solar Power Facilities, or the Interconnection Facilities or Transmission Facilities, without the express prior written consent of Lessee. Lessor's activities and any grant of rights by Lessor to any third party shall not, now or in the future, interfere with any rights granted to Lessee under this Lease.

13.2 Lessor Actions. Lessor shall, before beginning any trenching, digging or any other activity that could damage or interfere with any portion of the Solar Power Facilities or the Transmission Facilities that is located or installed underground (including cables, wires and conduit), give Lessee at least ten (10) days prior written notice of the time and location of such activity and permit a representative of Lessee to be present (although Lessee shall not be obligated to have a representative present) during such activity. Lessee shall provide Lessor with access to and, upon request, copies of all site diagrams in Lessee's possession, as well as descriptions of all known underground utilities and structures installed by Lessee on the Leased Property during the Lease Term and their locations.

13.3 Insolation. Insolation (access to sunlight) is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Without limiting the foregoing, Lessor shall not: (a) construct or permit to be constructed any structure; or (b) plant or allow to be planted any trees or other vegetation in each case, on the Owner's Lot or the real property adjacent to the Owner's Lot that is owned by Lessor, that is reasonably expected to decrease the output or efficiency of the Solar Power Facilities or adversely affect insolation levels on the Leased Property. Subject to the provisions of the preceding sentence, Lessor shall provide to Lessee complete copies of any proposed building plan, plat or site plan depicting any structure or improvement proposed to be erected on such Owner's Lot or on property adjacent to the Owner's Lot prior to submission thereof to any Governmental Authority in order for the Lessee to have an opportunity to review such proposed structure or improvement in reference to whether such structure or improvement will decrease the output or efficiency of the Solar Power Facilities or adversely affect insolation levels on the Leased Property in violation of this Section 13.3 and in the event Lessee determines that such structure or improvement will so

decrease the output or efficiency of the Solar Power Facilities or adversely affect insolation levels on the Leased Property and notifies Lessor in reasonable detail as to the basis for such determination, Lessor shall revise, amend or abandon such proposed construction in order to eliminate all such described adverse effects on the output or efficiency of the Solar Power Facilities or the insolation levels on the Leased Property. Further, if by Applicable Requirements a Governmental Authority requires the Lessor to plant any trees or other vegetation around the perimeter on such Owner's Lot or on other real property adjacent to the Owner's Lot, Lessor shall promptly notify Lessee, and if it is determined within thirty (30) days that such tree or vegetation planting is required under Applicable Requirements and Lessee is not contesting such Applicable Requirements, Lessor may proceed with such planting in co-ordination with the Lessee so as to minimize the insolation impact to the Solar Power Facilities. In the event Lessor does not comply with this Section 13.3, Lessee shall provide written notice to Lessor of such non-compliance. If Lessor fails to commence correction of such non-compliance within ten (10) business days following Lessee's notice and thereafter diligently pursue such correction to completion, Lessee may remove any interfering structures (including, if such structure is not on the Leased Property) trees, foliage, landscaping or other vegetation and Lessor shall, promptly upon demand, reimburse Lessee for the cost of such removal. Lessee may, at Lessee's sole cost and expense, cause trees, foliage, landscaping or other vegetation that interfere with insolation to be trimmed, pruned or otherwise controlled in a reasonable manner that is not in violation of any Applicable Requirements sufficient to eliminate such interference with the insolation levels on the Leased Property.

13.4 Quiet Enjoyment. During the Term, Lessor agrees that Lessee shall quietly and peaceably hold, possess and enjoy the Leased Property pursuant to the terms of this Lease and for the Lease Term, without any hindrance or molestation caused by any party claiming by, through or under Lessor. Lessor shall defend title to the Leased Property, and the use and occupancy of the same, against the claims of all others, except those claiming by or through Lessee. To the extent permissible by law, Lessor shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, which may materially affect the Leased Property, or the rights and/or obligations of Lessee hereunder, without first obtaining the prior written consent of Lessee.

ARTICLE 14 FORCE MAJEURE

14.1 If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use all reasonable efforts to avoid, mitigate or remove such causes of nonperformance and shall resume or continue performance promptly upon the removal or mitigation of such causes. If, at any time during the term of this Lease, an event of Force Majeure (i) substantially precludes operation of the Solar Power Facilities, (economically or otherwise), and (ii) notwithstanding the affected Party's efforts to avoid, mitigate or remove, lasts for a period of six (6) months or longer, then Lessee may terminate this Lease without incurring any liability to Lessor with respect to such termination by giving written notice to Lessor indicating the effective date of such termination, provided, however, that in the event of termination Lessee shall remain obligated to perform the Removal Obligations. The occurrence of an event of Force Majeure shall not excuse the payment of Rent until such time as this Lease is terminated as provided in this Article 14.

ARTICLE 15 TAXES

15.1 Personal Property Taxes; Real Estate Taxes. During the Lease Term, Lessee shall be liable for any personal property taxes on the Leased Property which are solely attributable to the installation, construction, operation and maintenance of the Solar Power Facilities. During the Lease Term, Lessee shall be liable for any increases in real estate taxes on the Leased Property which are solely attributable to the installation, construction, operation and maintenance of the Solar Power Facilities, or the income produced therefrom.

ARTICLE 16 ENVIRONMENTAL MATTERS

16.1 Compliance. Lessee shall comply with all Environmental Laws applicable to the Leased Property, including compliance with any reporting obligations under Environmental Laws, and shall use the Leased Property in a manner that does not endanger the health or safety of any Persons. To the extent that it is unrelated to Lessee's use of the Leased Property, Lessor shall comply with all Environmental Laws applicable to the Leased Property, including compliance with any reporting obligations under Environmental Laws.

16.2 Notices. Lessor and Lessee shall promptly deliver to one another copies of all notices or correspondence or requests from, or required to be submitted to, any Governmental Authority or other third party relating to non-compliance with any Environmental Laws with respect to the Leased Property or the Release, disposal, use, storage, generation, treatment, transportation or handling of Hazardous Materials on, in, under or about the Leased Property, including copies of any notices of violation.

16.3 Covenants. Each of Lessor and Lessee agrees that it will: (a) not: (i) permit Hazardous Substances to be present on or about the Leased Property in violation of any Applicable Requirements, including Environmental Laws, or (ii) Release any Hazardous Substances on, in, at, under, or from, the Leased Property, other than in accordance with any Applicable Requirements; and (b) comply in all material respects with Environmental Laws relating to the Leased Property and the use of Hazardous Substances on or about the Leased Property or in connection with the Solar Power Facilities and not engage in or permit its employees, agents or contractors to engage in any activity at the Leased Property in violation of any Environmental Laws or that results in a Release of Hazardous Substances as set forth in this Section 16.3.

16.4 Releases; Discharges. If Lessor or Lessee or any of their respective employees, agents or contractors Releases, discharges or disposes of Hazardous Substances on, in, at, from or about the Leased Property or any portion thereof to the environment in a manner that violates any Environmental Law, or results in a requirement to report, contain, remove or otherwise respond to such Release, discharge or disposal, the violating party agrees to report such occurrence to the appropriate Governmental Authorities to the extent required by Applicable Requirements, and to investigate, clean up, remove or remediate such Hazardous Substances at such violating Party's cost in full compliance with: (a) the requirements of all Environmental Laws; and (b) any additional requirements of Lessor that are reasonably necessary to protect the value of the Leased Property. As long as the violating Party is diligently proceeding with the actions specified in the previous sentence and such violation does not have a material adverse effect on the operations of the other Party, it shall be deemed to have cured any breach of the covenants set forth in this Article 16.

16.5 Surrender. Lessee shall surrender the Leased Property to Lessor upon the expiration or earlier termination of this Lease: (a) free of debris, waste and Hazardous Substances except for any such materials existing on the Leased Property as of the Effective Date or thereafter placed on, about or near the Leased Property by Lessor, or its employees, agents or contractors, and (b) in a condition which complies with all Environmental Laws and all obligations on Lessee's part.

16.6 Environmental Matters. Lessor represents and warrants that, to the best of its knowledge, the Leased Property has not been used by Lessor for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment or disposal of any Hazardous Substances. Lessor has not received any notice from any governmental body claiming any violation of any Environmental Law, and neither Lessor, its agents or employees, nor, any occupant or prior Lessor of the Leased Property, has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order under applicable statute, governmental regulation and/or rule.

16.7 Survival. The provisions of this Article 16 shall survive the expiration or earlier termination of this Lease.

ARTICLE 17 INDEMNIFICATION

17.1 Lessee. Lessee shall indemnify, defend and hold harmless Lessor, its members, officers, directors, agents, trustees, beneficiaries, representatives, legal counsel and employees (collectively and individually, the “Lessor Indemnified Party”), from and against any and all liabilities, claims, demands, actions, causes of action, counterclaims, suits, injunctive proceedings, administrative actions, investigations, judgments, losses, damages, expenses and other obligations (collectively, “Liabilities”) including court costs, experts’ fees and all attorneys’ fees arising out of, relating to or incurred in connection with any third party claim against the Lessor Indemnified Party based upon or arising out of: (a) the breach or default by Lessee of any covenant, representation or warranty made by Lessee in this Lease; (b) any injury or damage to life, limb or person, or the property or chattel of such third party; (c) the presence or Release of Hazardous Substances in, under, on or about the Leased Property or any part thereof, which are brought or permitted to be brought onto the Leased Property or any part thereof by Lessee, its shareholders, members, officers, directors, agents, contractors, trustees, representatives and employees or any thereof; or (d) the violation of or creation of any Liabilities under any Environmental Laws by Lessee, its shareholders, members, officers, directors, agents, contractors, representatives and employees or any thereof; provided that any indemnity obligation set forth in this Section 17.1 shall not apply to the extent of any Liabilities (A) caused by an act or omission of any Lessor Indemnified Party or (B) arising under or in connection with any employee of Lessor on the Leased Property. The Lessee’s obligation under this Section 17.1 shall survive the termination of this Lease.

17.2 [INTENTIONALLY DELETED]

ARTICLE 18 PERMITTING AND ZONING

After the Effective Date, Lessor agrees to cooperate with Lessee in obtaining any Permits necessary for the construction, installation, operation and maintenance of the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements) and for the Lessee to perform its obligations under this Lease including obtaining, amending, assigning or transferring to Lessee any Governmental Approvals held by Lessor applicable to the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements). If it is reasonably anticipated at the time of obtaining any Governmental Approval that such Governmental Approval will remain in effect following the expiration of the Lease Term, Lessee shall obtain written approval from Lessor prior to obtaining such Governmental Approval, such approval not to be unreasonably withheld, conditioned or delayed. If Lessee has submitted to Lessor a written request for approval of a Governmental Approval and Lessor fails to respond to such request within thirty (30) days following delivery of such request, such request shall be deemed approved. Lessor shall have no liability to Lessee if Lessee is unable to obtain any Governmental Approval.

ARTICLE 19 UTILITIES

If requested by Lessee, Lessor may grant to Lessee (at Lessee’s sole cost and expense) such additional easements, on terms and conditions satisfactory to Lessee, as shall be reasonably necessary to ensure that utility services continue to be provided to the Leased Property and the Solar Power Facilities in the event that Lessor transfers the Leased Property or any portion thereof (voluntarily or otherwise). Lessor shall grant Lessee the additional easements if Lessor approves their use and location, which approval shall not be unreasonably withheld, delayed or conditioned.

ARTICLE 20 LEASEHOLD MORTGAGES, ASSIGNMENTS, SUBLEASES & CURE RIGHTS FOR LENDERS

20.1 Right to Mortgage, Assign and Sublease.

(a) Lessee and each Sublessee shall have the right to transfer, sell, or assign any of its rights or obligations arising under this Lease, in whole or in part and at any time and from time to time,

upon the express prior written consent of the Lessor, whose consent or approval shall not unreasonably be withheld, to any Person, provided that, in connection with such transfer, sale or assignment, the provisions of Section 20.4 shall be applied.

(b) Notwithstanding the provisions of Section 20.1(a) above, Lessee shall have the absolute right at any time and from time to time, without Lessor's prior written consent or approval (but with prior written notice to Lessor) to: (i) assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument), sublease or grant an easement, sub-easement or license in, or otherwise transfer all or any portion of its right, title or interest under this Lease, in any Sublease and/or in any of the Solar Power Facilities to Lessee's Affiliate, to an investment fund managed by Syncarpha Capital, LLC ("Syncarpha") or a financing entity or Lender designated by Syncarpha, as security for the repayment of any indebtedness and/or the performance of any obligation or for any other purpose; and (ii) mortgage its leasehold interest hereunder and/or collaterally assign its interest in this Lease and in any monies due under this Lease in connection with obtaining financing for the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements), as more fully set forth in Section 20.5 below, or otherwise encumber and grant security interests in all or any part of its interest in this Lease, the Leased Property, the Easements, the Solar Power Facilities, Interconnection Facilities or Transmission Facilities (holders of these various security interests are referred to as "Leasehold Mortgagees"). Any Leasehold Mortgagee that has succeeded to Lessee's interests under this Lease shall also have the right, without Lessor's prior written consent or approval (but with prior written notice to Lessor) to assign or sublet the whole or any portion or portions of its interest in the this Lease, the Leased Property, the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements) and the Easements for the uses permitted under this Lease, or grant co-leases, separate leases, easements, licenses or similar rights (however denominated) to one (1) or more Creditworthy persons or entities (each, an "Assignee"). Following any such sale, conveyance, lease, assignment or sublet, the term "Lessee" shall be deemed to include each "Assignee" then holding Lessee's interest in this Lease. However, no Leasehold Mortgagee or Assignee shall by virtue of Lessee's conveyance to it acquire any greater interest in the Leased Property or the Easements than Lessee then has under this Lease. The foregoing to the contrary notwithstanding, any sublet or assignment with respect to this Lease (except for assignments referenced in this Section 20.1(b)(i) or (ii) above) will only be effective upon the written assumption by the Assignee of the applicable obligations of Lessee hereunder. As used herein, (A) the term "Sublessee" means any Person that receives a transfer from Lessee in accordance with the provisions of this Lease of all or any portion of the right, title or interest under this Lease or in one or more Easements; (B) the term "Sublease" means the grant or assignment of such rights from Lessee to a Sublessee; and (C) the term "Lender" means any financial institution or other Person (including a Leasehold Mortgagee) that from time to time provides secured financing for some or all of Lessee's or a Sublessee's Solar Power Facilities or Operations, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns. References to Lessee in this Lease shall be deemed to include any Person that succeeds (whether by assignment or otherwise) to all of the then-Lessee's then-existing right, title and interest under this Lease.

20.2 [INTENTIONALLY DELETED].

20.3 Assignment by Lessor. Lessor may not sell, transfer, sell, encumber, assign, pledge or cause to be assumed (together, "Assign"; and any such action, an "Assignment") this Lease, in whole or in part, to any Person unless such Person shall execute a written agreement in form and substance reasonably acceptable to the Lessee under which such Person unconditionally agrees to assume and undertake all duties and responsibilities of "Lessor" hereunder, whether arising prior to the effective date of such Assignment. Lessor shall be permitted to Assign its rights under this Lease to, or to otherwise mortgage and encumber the Leased Property for the benefit of, lenders or other investors providing financing of the Leased Property in Lessor's sole and absolute discretion, subject, however, to the provisions of this Lease, including, without limitation, the provisions of Section 20.5 and Article 21.

20.4 Effect of Assignment. If the rights and interests of Lessee in this Lease shall be assigned in accordance with Section 20.1(a) (except for assignments referenced in Section 20.1(b)(i) or (ii)) and the assuming party shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Lessor arising or accruing hereunder from and after the date of such assumption, Lessee shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Lessor shall continue this Lease with the assuming party as if such person had been named as Lessee under this Lease, provided, however, that the assuming party is Creditworthy.

20.5 Financing. Notwithstanding any provisions in this Lease to the contrary, the Lessee may upon written notice to Lessor assign or mortgage, in whole or in part, in connection with any financing of the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements), Lessee's rights, title and interests under this Lease and its leasehold interest hereunder for purposes of securing such financing. Lessor hereby consents to any such assignment, and acknowledges that such assignment shall not release Lessee from its obligations hereunder;

(b) Following an event of default under any financing documents relating to the Solar Power Facilities and all appurtenances thereto (including the Interconnection Facilities and the Transmission Facilities and Improvements), any Lender or Leasehold Mortgagee may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Lessee thereafter arising under this Lease; and

(c) Lessor agrees to enter into the Non-disturbance, Consent and Recognition Agreement by and among the Lessee's then chosen Lender or Leasehold Mortgagee, Lessor, and Lessee and attached to this Lease as **Exhibit G**) which shall include, without limitation, consent by Lessor to the Lessee's collateral assignment of this Lease and Lessee's leasehold interest hereunder, cure rights and step in rights in favor of the Lender or Leasehold Mortgagee.

20.6 Mortgagee Assignee Obligations. Any Lender or Leasehold Mortgagee or Assignee who acquires Lessee's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure that does not directly hold an interest in this Lease, or that holds an interest, lien or security interest in this Lease solely for security purposes, shall have no obligation or liability under this Lease for obligations arising prior to the time such Lender, Leasehold Mortgagee or Assignee directly holds an interest in this Lease, or succeeds to title to such interest, or to this Lease. Any such Lender, Leasehold Mortgagee or Assignee shall be liable to perform obligations under this Lease only for and during the period it directly holds such interest or title.

20.7 Estoppel Certificates. Within fifteen (15) days after written request therefore, Lessor shall execute such estoppel certificates (certifying as to such truthful matters as Lessee Access Parties, Lenders, Assignees or Leasehold Mortgagees may reasonably request, including that no default then exists under this Lease, if such be the case, and that this Lease remains in full force and effect), consents to assignment and non-disturbance agreements as Lessee Access Parties or any Lender, Leasehold Mortgagee or Assignee may request from time to time, it being intended that any such estoppel certificates, consents to assignment and the like may be relied upon by any Lenders, Leasehold Mortgagees or Assignees or prospective Lenders, Leasehold Mortgagees, or Assignees, or any prospective and/or subsequent purchaser or transferee of all or a part of Lessee's interest in the Leased Property, the Easements, the Improvements, the Interconnection Facilities and/or Transmission Facilities and/or the Solar Power Facilities.

20.8 Financing Sources as Third Party Beneficiaries. The provisions of Section 20.5 through Section 20.8, inclusive, and Article 21 are for the benefit of the Lenders, Leasehold Mortgagees and Assignees, as well as the Parties hereto, and shall be enforceable by the Lenders, Leasehold Mortgagees and Assignees as express third-party beneficiaries hereof. Lessor hereby agrees that none of the Lenders, Leasehold Mortgagees and Assignees, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Lease on the

part of Lessee or shall have any obligation or liability to Lessor with respect to this Lease except to the extent any of them becomes a party hereto pursuant to this Article 20 or through the exercise of its rights or remedies and the written assumption of the Lease or the Easement Agreement. Any exercise by the Lenders, Leasehold Mortgagees and Assignees of any rights and remedies hereunder shall be subject to all rights, defenses and remedies available to Lessor, in each case subject to the terms of any non-disturbance, consent and recognition agreement entered into between or among the Lenders, Leasehold Mortgagees and Assignees and Lessor.

ARTICLE 21 MORTGAGEE PROTECTION

21.1 Leasehold Mortgagee Protection. Notwithstanding any other provisions contained in this Lease to the contrary, any Lender, Leasehold Mortgagee or Assignee shall, for so long as its mortgage or other security interest is in existence, be entitled to the protections set forth in Section 20.8, which shall be in addition to those granted elsewhere in this Lease, upon delivery to Lessor of notice of its name and address.

21.2 Leasehold Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Lender, Leasehold Mortgagee or Assignee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to Lessee's leasehold estate and easement rights by any lawful means; (c) to take possession of and operate the Leased Property or any portion thereof, in accordance with the terms of this Lease and to perform all obligations to be performed by Lessee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire such leasehold estate and easement rights by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such leasehold estate to a third party.

21.3 Right to Cure Defaults/Notice of Defaults/Assignee's Right to New Lease. To prevent termination of this Lease or any partial interest in this Lease, each Lender, Leasehold Mortgagee or Assignee shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any default and to prevent the termination of this Lease or any partial interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Lessor shall give written notice of such default to each Lender, Leasehold Mortgagee or Assignee previously disclosed by Lessee, concurrently with delivery of notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Lender, Leasehold Mortgagee or Assignee shall have the same amount of time to cure the default as to Lessee's interest in this Lease as is given to Lessee. The cure period for each Lender, Leasehold Mortgagee or Assignee shall begin to run at the end of the cure period given to Lessee in this Lease.

21.4 Extended Cure Period.

(a) If any default by Lessee under this Lease cannot be cured without the Lender, Leasehold Mortgagee or Assignee obtaining possession of all or part of the Leased Property and/or all or part of the Solar Power Facilities and/or all or part of Lessee's interest in this Lease, then any such default shall be deemed remedied if: (a) within ninety (90) days after receiving notice from Lessor as set forth in Section 21.3, either Lender, Leasehold Mortgagee or Assignee shall have acquired possession of all or part of the Leased Property and/or all or part of the Solar Power Facilities and/or all or part of such interest in this Lease, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (b) the Lender, Leasehold Mortgagee or Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (c) after gaining possession of all or part of the Leased Property and/or all or part of the Solar Power Facilities and/or all or part of such interest in this Lease, the Lender, Leasehold Mortgagee or Assignee performs all other obligations as and when the same are due in accordance with the terms of this Lease, but only for the period attributable to its possession of the Leased Property, provided, however, that the Lender, Leasehold Mortgagee or Assignee shall pay the Rent and perform all the other obligations of Lessee hereunder as of the date that Lessor could have terminated this Lease for an Event of Default. If a Lender, Leasehold Mortgagee or Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee, as the case

may be, from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

(b) During any period of possession of the Leased Property by a Lender, Leasehold Mortgagee or Assignee and/or during the pendency of any foreclosure proceedings instituted by a Lender, Leasehold Mortgagee or Assignee, the Lender, Leasehold Mortgagee or Assignee shall pay or cause to be paid the fees, Rent and all other monetary charges payable by Lessee under this Lease which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's leasehold estate by the Lender, Leasehold Mortgagee or Assignee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale (all of which are included in the term "Assignee"), this Lease shall continue in full force and effect and the Lender, Leasehold Mortgagee or Assignee shall, as promptly as reasonably possible, commence the cure of all defaults under this Lease and thereafter diligently process such cure to completion, and upon such completion of the cure of all defaults under the Lease Lessor's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Lender, Leasehold Mortgagee or Assignee or such party acquiring title to Lessee's leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable defaults"). Non-curable defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Lease by such party.

(c) Any Lender, Leasehold Mortgagee or Assignee who acquires Lessee's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease incurred or accruing after the Lender, Leasehold Mortgagee or Assignee no longer has ownership of the leasehold estate or possession of the Leased Property.

(d) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease as long as all Rent and all other monetary charges payable by Lessee under this Lease are promptly paid by the Lender, Leasehold Mortgagee or Assignee in accordance with the terms of this Lease. The acceptance of Rent by Lessor shall not be deemed a waiver of any other rights or remedy it may have under the Lease at law or in equity.

21.5 New Lease.

(a) If this Lease terminates for any reason, including because of Lessee's default or if the leasehold estate is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy Applicable Requirements or other Applicable Requirements affecting creditor's rights and, within ninety (90) days after such event, Lessee or any Lender, Leasehold Mortgagee or Assignee shall have arranged to the absolute satisfaction of Lessor for the payment of Rent, fees and other charges due and payable by Lessee as of the date of such event, then Lessor shall execute and deliver to such Lender, Leasehold Mortgagee or Assignee or designee, as the case may be, a new lease to the Leased Property which (a) shall be for a term equal to the remainder of the Lease Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions and limitations as this Lease (except as otherwise provided in this Section 21.5(a) and for any requirements that have been fulfilled by Lessee or any Lender, Leasehold Mortgagee or Assignee prior to rejection or termination of this Lease); and (c) shall include that portion of the Solar Power Facilities in which Lessee had an interest on the date of rejection or termination. A Lender, Leasehold Mortgagee or Assignee shall pay all of Lessor's reasonable legal fees associated with a new lease of the Leased Property.

(b) After the termination, rejection or disaffirmation of this Lease and during the period thereafter during which any Lender, Leasehold Mortgagee or Assignee shall be entitled to enter into a new lease of the Leased Property, Lessor will not terminate any sublease or the rights of any sub-lessee unless such sub-lessee shall be in default under such sublease.

(c) If more than one (1) Lender, Leasehold Mortgagee or Assignee makes a written request for a new lease pursuant to this provision, the new lease shall be delivered to the Lender, Leasehold Mortgagee or Assignee requesting such new lease whose mortgage or assignment of this Lease or the

Lessee's leasehold interest hereunder is prior in lien, and the written request of any other Lender, Leasehold Mortgagee or Assignee whose lien is subordinate shall be void and of no further force or effect.

(d) The provisions of this Article 21 shall survive the termination, rejection or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 21.5 (d) were a separate and independent contract made by Lessor, Lessee and each Lender, Leasehold Mortgagee or Assignee, and, from the effective date of such termination, rejection or disaffirmation of this Lease to the date of execution and delivery of such new lease, such Lender, Leasehold Mortgagee or Assignee may use and enjoy said Leased Property in accordance with the terms of such new lease, provided that all of the conditions for a new lease as set forth above are complied with.

21.6 Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Leasehold Mortgage or loan or other financing held by a Lender that is secured by Lessee's grant of a security interest in the Leased Property, this Lease, the Solar Power Facilities or any other Improvement, this Lease shall not be terminated, modified or amended, and Lessor shall not accept a surrender of all or any part of the Leased Property or a cancellation or release of this Lease from Lessee, prior to expiration of the Lease Term without the prior written consent of the Lender, Leasehold Mortgagee or Assignee, provided, however, that Lessor shall be permitted to terminate this Lease without the consent of Lender, Leasehold Mortgagee or Assignee if (a) such termination resulted from an Event of Default, and (b) Lender, Leasehold Mortgagee or Assignee was provided notice in accordance with Section 21.3 and the right to cure such default for a period of ninety (90) days following such notice, and failed to cure such default within such period.

21.7 No Merger. There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Leased Property or in the Leased Property by reason of the fact that this Lease or the leasehold estate or any interest in the leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Property or in the Owner's Lot, and all persons (including each Lender, Leasehold Mortgagee or Assignee) having an interest in this Lease or in the estate of Lessor and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

21.8 [INTENTIONALLY DELETED].

21.9 Damage/Condemnation. The disposition of any condemnation award and/or casualty insurance proceeds shall be allocated among Lessor, Lessee, any Lender, Leasehold Mortgagee or Assignee as their interests may appear.

21.10 Further Amendments. At Lessee's request, Lessor shall amend this Lease to include any provision that may reasonably be requested by a proposed Lender, Leasehold Mortgagee or Assignee, provided that such amendment does not impair any of Lessor's rights hereunder or increase the burdens or obligations of Lessor hereunder. Upon the request of any Lender, Leasehold Mortgagee or Assignee, Lessor shall execute any additional instruments reasonably required to evidence such Lender, Leasehold Mortgagee or Assignee's rights under this Lease. Lessor shall be reimbursed by Lessee for reasonable attorneys' fees incurred in connection the review of any such request.

Enforcement. The provisions of Article 20 and Article 21 of this Lease are for the express benefit of and shall be enforceable by each Lender, Assignee and Leasehold Mortgagee as if it were a party named in this Lease.

ARTICLE 22 CONDEMNATION AND CASUALTY

22.1 Condemnation. If, at any time during the Lease Term, any authority having the power of eminent domain shall condemn a portion of the Leased Property, the Easements, the Solar Power

Facilities or the Transmission Facilities for any public use or otherwise, such that the operation of the Solar Power Facilities becomes, in the reasonable discretion of Lessee, impractical by materially reducing the number of Generating Units or materially impacting access to the Leased Property, then Lessee may terminate this Lease without incurring any liability to Lessor with respect to such termination by giving written notice to Lessor indicating the effective date of such termination except that Lessee will have responsibility to remove the Transmission Facilities, Interconnection Facilities and the Solar Power Facilities from the Leased Property. Lessee shall have the right to exercise its termination option only within the six (6) month period after the Lessee receives knowledge of the condemnation.

22.2 Apportionment, Distribution of Award. Subject to Section 21.9, all sums awarded, including damages and interest, shall be divided as follows and in the order of priority listed:

(a) First, Lessor shall be entitled to receive payment for the taking of the real property constituting the Leased Property (including any “bonus value” in this Lease).

(b) Second, Lessee shall be entitled to receive payment for any cost or loss that Lessee may sustain in the taking, removal and/or relocation of the Solar Power Facilities, the Easements, the Transmission Facilities or the Interconnection Facilities, if any.

(c) Third, Lessee and Lessor shall each be entitled to receive payment for 50% of Lessee’s anticipated or lost revenues that would have been generated by the Solar Power Facilities.

(d) Fourth, Lessor and Lessee shall each be entitled to receive payment for 50% of Lessor’s anticipated or lost revenues under this Lease.

(e) Fifth, all remaining amounts of the award shall be paid to Lessor.

22.3 Lessee Repair and Restoration. If, at any time during the Term, the Solar Energy Facility shall be substantially damaged or destroyed and rendered inoperable by fire or other occurrence of any kind, Lessee shall at its sole cost and expense either (a) repair or replace the Improvements, or (b) elect to terminate this Lease in which case Lessee shall decommission and remove the Transmission Facilities, Interconnection Facilities and the Solar Power Facilities and promptly restore the Leased Property to substantially the same condition as existed prior to the Effective Date. Such removal, repair or replacement, including such changes and alterations as aforementioned and including temporary repairs, are referred to in this Article as the “Work.”

22.4 Conditions of the Work. Except as otherwise provided in this Article 22, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of this Lease.

22.5 Payment of Insurance Proceeds. All insurance money paid to Lessee on account of such damage or destruction under the policies of insurance provided for in Article 3, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be applied by Lessee to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose. If the insurance proceeds received by Lessee shall not be sufficient to pay the entire cost of the Work or if Lessee finds that the Work is otherwise not economically justified, Lessee may elect not to repair and replace the Transmission Facilities, Interconnection Facilities and the Solar Power Facilities, and to terminate this Lease upon written notice to the Lessor.

22.6 Failure to Commence Repairs. If the Work shall not have been commenced within one hundred eighty (180) days of the date of the casualty or other occurrence, or such longer period as may be reasonably required to adjust the insurance, achieve final plans and obtain all necessary Permits, or if such Work after commencement shall not proceed with due diligence (any Force Majeure event excepted), Lessor may terminate this Lease upon written notice to Lessee. On such termination, the insurance proceeds received by Lessee shall be used to the extent necessary to demolish and remove the Transmission

Facilities, Interconnection Facilities and the Solar Power Facilities and any other structures on the Leased Property and to restore the Leased Property. Upon the completion of such activities, Lessee shall have no further obligation to pay Lessor the Rent or any other amount under this Lease (other than payments due as of the effective date of termination and payments required by any provisions of this Lease that expressly survive termination).

22.7 Lessee Right to Terminate in Event of Shutdown. In the event a Governmental Authority decrees, orders or demands that operation of the Solar Power Facilities cease or that the Solar Power Facilities must be removed from the Leased Property, Lessee shall have the right to terminate this Lease without penalty to either Party upon delivery to Lessor of thirty (30) days prior written notice.

ARTICLE 23 DEFAULT AND TERMINATION

23.1 Default by Lessee. Subject to the provisions of Section 21.2, Section 21.3, Section 21.4 and Section 21.5, the occurrence of any of the following shall constitute an event of default ("Event of Default") on the part of Lessee:

(a) A default in the payment by Lessee of Rent under this Lease shall have occurred and remains uncured for ten (10) days after written notice to Lessee;

(b) A default by Lessee under this Lease, other than a default in the payment of Rent as provided in Section 23.1(a) above, shall have occurred and remains uncured for thirty (30) days after Lessor provides Lessee with written notice of such default; provided, however, that if such default is not reasonably capable of being cured within such thirty (30) day period, Lessee shall have such longer period as is reasonably necessary to remedy such default so long as Lessee continuously and diligently pursues such remedy at all times until such default is cured;

(c) Abandonment of the Leased Property after the Commercial Operation Date, where such abandonment continues for a period of thirty (30) days after written notice thereof by Lessor to Lessee; or

(d) If Lessee shall (a) become insolvent or generally unable to pay its debts as they become due; (b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or make a general assignment for the benefit of its creditors; (c) in the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency Applicable Requirements, or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days without such being dismissed; or (e) take any formal action authorizing or in furtherance of any of the foregoing.

23.2 Remedies of Lessor. Upon the occurrence of an Event of Default, Lessor shall have all of the rights of a lessor at law or in equity, including the following:

(a) Subject to the provisions of Sections 21.3, Section 21.4, Section 21.5 and Section 21.5, and after expiration of the applicable cure periods specified therein and herein, Lessor shall have the right to terminate this Lease, and at any time thereafter recover possession of the Leased Property or any part thereof through legal action and expel and remove therefrom Lessee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Leased Property without prejudice to any of the remedies that Lessor may have under this Lease, or at law or equity by reason of Lessee's default or of such termination.

(b) Pursue any remedies available to it at law or in equity including damages, specific performance, injunction, or other equitable relief.

All of the remedies permitted or available to Lessor under this Lease, or at law or in equity, shall be cumulative and not alternative and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

23.3 Default by Lessor. The occurrence of any of the following shall constitute an event of default ("Lessor Default") on the part of Lessor:

(a) A default in the payment by Lessor of amounts owed by Lessor to Lessee under this Lease shall have occurred and remains uncured for thirty (30) days after written notice to Lessor;

(b) A default by Lessor under this Lease, other than a default in the payment of amounts owed by Lessor to Lessee as provided in Section 23.3(a) above, shall have occurred and remains uncured for thirty (30) days after Lessor provides Lessee with written notice of such default; provided, however, that if such default is not reasonably capable of being cured within such thirty (30) day period, Lessor shall have such longer period as is reasonably necessary to remedy such default so long as Lessor continuously and diligently pursues such remedy at all times until such default is cured; or

(c) If Lessor shall: (a) become insolvent or generally unable to pay its debts as they become due; (b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or make a general assignment for the benefit of its creditors; (c) in the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency Applicable Requirements, or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days without such being dismissed; or (e) take any formal action authorizing or in furtherance of any of the foregoing.

23.4 Remedies of Lessee. Upon the occurrence of a Lessor Default, which is not cured by Lessor or Lessor's assignee, Lessee shall have all of the rights of a lessee at law or in equity, including the following:

(a) do or cause to be done, on behalf of and for the account of Lessor, whatever Lessor is obligated to do under the terms of this Lease, and Lessee, at its option, may elect to offset any such amounts against rents or other amounts due and owing hereunder;

(b) terminate this Lease by written notice to Lessor and, in connection therewith remove all of the tangible property comprising the Solar Power Facilities from the Leased Property at Lessor's expense; or

(c) exercise or pursue any remedies available to it at law or in equity, including damages, specific performance, injunctive or other equitable relief, or exercise any remedies under this Lease.

ARTICLE 24 DECOMMISSIONING

24.1 Removal. Upon the termination or expiration of this Lease and as soon as reasonably practicable thereafter, but no later than three (3) months thereafter, Lessee is required to remove the Solar Power Facilities and other Improvements owned by Lessee from the Leased Property and appurtenant areas, and return the Leased Property and appurtenant areas to their original condition existing

on the Effective Date, with the exception that (i) roadway grading may remain in place provided that the roadway surfacing (if any) is removed and the remaining sub-grade is de-compacted and re-vegetated, (ii) buried conduit more than two (2) feet below grade may be left in place, and (iii) any other below ground components of the Improvements may be left in place at the unilateral election of Lessor.

ARTICLE 25 COMPLIANCE WITH LAW AND ALTERATIONS

25.1 Compliance with Laws. Lessee, at Lessee's expense, shall comply with all Applicable Requirements, Governmental Approvals and Permits issued to Lessee and related to the Solar Power Facilities or their operation.

25.2 Alterations. Lessee shall have the right from time to time both before and after the completion of the Improvements and at Lessee's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the Leased Property as is reasonably required to conduct the Operations in compliance with the provisions of this Lease, subject, however, in all cases to the following:

(a) Except as set forth herein, no alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the Solar Power Facilities, or (ii) reduce or impair, to any material extent, the use of the Solar Power Facilities for the generation of electricity, subject to applicable laws and safety standards (any such alteration, a "Substantial Alteration").

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Lessor, which consent shall not be unreasonably conditioned, withheld or delayed by Lessor.

(c) Any Substantial Alteration shall be conducted under the supervision of a contractor, architect or engineer selected by Lessee and approved in writing by Lessor, which approval shall not be unreasonably conditioned, withheld or delayed, and no such Substantial Alteration shall be made except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such contractor, architect or engineer and approved in writing by Lessor, which approval shall not be unreasonably conditioned, withheld or delayed.

(d) Any alteration or Substantial Alteration shall be made with reasonable dispatch (Force Majeure events excepted) and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and buildings and zoning laws, and with all other Applicable Requirements.

(e) At or prior to completion of any Substantial Alteration, Lessee will provide Lessor with complete copies of all final plans and specifications therefor not previously provided.

ARTICLE 26 RIGHT OF FIRST OFFER

Lessor shall have the right to sell the Owner's Lot at any time during the Term; provided however, that Lessee shall have the right of first offer for the Owner's Lot described below. Prior to entering into any agreement to sell the Owner's Lot to a third party, Lessor shall notify Lessee in writing (the "First Offer Notice") that Lessor desires to sell the Owner's Lot, whether on the open market or pursuant to an existing offer to purchase received by Lessor from a third party for the Owner's Lot. Upon receipt of the First Offer Notice, Lessee shall have the right to offer to purchase the Owner's Lot by sending Lessor within fifteen (15) days after Lessee's receipt of the First Offer Notice a purchase and sale agreement duly executed by the Lessee (the "Purchase Agreement") which shall contain customary terms and conditions for a transaction similar to the proposed sale of the Owner's Lot, including, without limitation (i) the purchase price at which the Lessee is willing to purchase the Owner's Lot; (ii) the conditions precedent to settlement between the Lessor and Lessee, and (iii) the proposed closing date, which shall in no event be less than sixty (60) days following the date of the First Offer Notice. If Lessor wishes to sell the Owner's Lot in accordance with the Purchase Agreement, then within fifteen (15) days following Lessor's receipt of

the Purchase Agreement, Lessor shall execute and deliver the Purchase Agreement to Lessee and the parties shall proceed to closing thereunder. If the Lessor does not timely execute and deliver the Purchase Agreement to Lessee, then the Lessor shall be free to sell the Owner's Lot to any third person thereafter on any terms elected by Lessor in its sole discretion.

ARTICLE 27 MISCELLANEOUS

27.1 Covenants Running with the Land. This Lease and all of the Easements, covenants, agreements, conditions and restrictions set forth in this Lease are effective as of the Effective Date with respect to the lease of the Leased Property by Lessee and are intended to be and shall be construed as covenants that burden and run with the Owner's Lot or the adjacent real property owned by Lessor, as may be applicable.

27.2 Successors and Assigns. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee, their heirs, successors and assigns (including each Assignee). Lessor agrees that the rights of Lessee under this Lease shall extend to agents, representatives, employees, contractors, subcontractors and other service providers of Lessee.

27.3 Memoranda. Lessor and Lessee shall execute in recordable form the Memorandum of Lease attached hereto as **Exhibit E** and Lessee shall be authorized to record such instrument in the Land Records at Lessee's cost. Any amendment to this Lease and between the parties hereto (or any related memoranda reflecting any such amendments) shall be recorded in the Land Records.

27.4 Notices. Any notice required under this Lease shall be in writing and shall be sent to the appropriate notice address by overnight delivery using a nationally recognized overnight courier. Notice given will be effective upon the earlier to occur of actual delivery to the Notice Address of the addressee or refusal of receipt by the addressee. Any party may change its notice address by delivering appropriate written notice to the other party in the manner described above; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice by the addressee.

if to Lessor:

Northern New Mexico College
921 N. Paseo de Oñate
Española, New Mexico 87532

if to Lessee:

Syncarpha El Rito, LLC
250 West 57th Street
New York, New York 10107
Attention: Clifford Chapman

If to any Leasehold Mortgagee: at the address indicated in the notice to Lessor provided under Section 20, above or, if none, at the address in the recorded instrument evidencing its leasehold mortgage.

27.5 Liability. Lessee shall save Lessor harmless and indemnify Lessor from all injury, loss, claims or damage to any person or property while on the Leased Premises, unless caused by the willful acts or omissions or gross negligence of Lessor, its employees, agents, licensees or contractors. The liability of the Landlord as a New Mexico governmental entity shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq., NMSA 1978, as amended.

27.6 Tax Credit. If a change in Applicable Requirements renders Lessee ineligible for (a) any tax credit, benefit or tax incentive for alternative energy expenditure established by any local, state

or federal government or (b) any investment tax credits under Section 48 of the Internal Revenue Code with respect to the Solar Power Facilities, then, at Lessee's option, Lessor and Lessee shall reasonably cooperate in good faith, at no cost to Lessor, to amend this Lease or replace it with a different instrument so as to make Lessee eligible for such tax credits, benefits or incentives with respect to the Solar Power Facilities, provided that Lessor shall have at least the same rights and benefits (including the amount of Rent) and no greater obligations than Lessor has under this Lease.

27.7 Severability. In the event that any provisions of this Lease are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Lessor and Lessee shall negotiate an equitable adjustment in the provisions of this Lease with a view toward effecting the purposes of this Lease, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

27.8 Entire Agreement; Amendments. This Lease and the Easements constitute the entire agreement between Lessor and Lessee respecting the subject matter herein and it replaces and supersedes any prior agreements. This Lease shall not be modified or amended except in writing signed by both Parties or their lawful successors in interest.

27.9 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of New Mexico. Subject to the limitations and other provisions set forth in Section 27.10, the Parties irrevocably submit to the personal jurisdiction of any federal court located in the State of New Mexico that may properly exercise subject matter jurisdiction, and waive any objection to the jurisdiction of such court, including, without limitation, objections that such forum is inconvenient or prejudicial.

27.10 Disputes. All disputes initiated in writing by one Party to the other Party arising under this Lease, or in regard to the Leased Property, the Solar Power Facilities, or the transactions contemplated under this Lease, of whatever kind and nature, may be resolved in accordance with this Section 27.10 if agreed upon in writing by the parties. A Party who has initiated a dispute in writing may, if agreed upon by the parties in writing, promptly thereafter submit such dispute for binding arbitration by providing to JAMS Endispute, 620 Eighth Avenue, 34th Floor, New York, NY 10018 and the other Party a written request for binding arbitration, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS Endispute and with one another in selecting one (1) arbitrator less than eighty (80) years old from the JAMS Endispute panel of neutrals and in scheduling the arbitration proceedings; provided, however, that in no event shall such arbitrator be an individual with whom either Party (or any of their managers, employees, directors, officers or trustees) has engaged in any business or professional transaction or prior litigation or arbitration, directly or, by reason of such managers, employees, directors, officers or trustees' employment with or partnership in another Person, indirectly. The Parties agree that they will participate in the binding arbitration in good faith and all offers, promises, conduct and statements, whether oral or written, made in the course of the binding arbitration by any of the Parties, their agents, employees, experts and attorneys, and by the arbitrator or any JAMS Endispute employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the arbitration. The arbitration shall be administered by JAMS Endispute pursuant to JAMS Endispute' Streamlined Arbitration Rules and Procedures and the arbitration hearing shall last no longer than one (1) day. The arbitral award shall be issued no later than seven (7) days after the hearing day of arbitration and judgement on such award may be entered in any court having jurisdiction in the State of New Mexico. This Section 27.10 shall not preclude either of the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction in the State of New Mexico. In any arbitration arising out of or related to this Lease, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits. For the avoidance of doubt, when arbitration is agreed upon by the parties in writing and in the event a written dispute is issued in connection with an Event of Default or any breach of any Party's representations, warranties, covenants or agreements contained in this Lease, the provisions of this Section 27.10 shall be the sole and exclusive remedy of the defaulting Party and the non-defaulting Party and in such case the non-defaulting Party shall not exercise remedies permitted hereunder unless in

accordance with an arbitration award. When arbitration pursuant to the provisions of this Section 27.10, such arbitration shall also be the sole and exclusive remedy with respect to any other dispute arising under this Lease, the Leased Property, the Solar Power Facilities, or the transactions contemplated under this Lease. In furtherance of the foregoing, each Party agreeing to arbitration hereby waives, to the fullest extent permitted under Applicable Requirements, any and all other rights, claims and causes of action it or any of its Affiliates may have against the other Party hereunder or under Applicable Requirements with respect to the claims described in the preceding two sentences. The only exception to the foregoing sole and exclusive remedy provisions are claims for non-monetary relief.

27.11 Partial Invalidity. Should any provision of this Lease be held, in a final and unappealable decision by an arbitration award or otherwise by a court of competent jurisdiction, to be either invalid, void or unenforceable: (a) the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding; and (b) Lessor and Lessee shall negotiate an equitable adjustment in the provisions of this Lease with a view toward effecting the purposes of this Lease, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term be for a longer period than the longest period therefore permitted by Applicable Requirements.

27.12 No Brokers. The Parties hereby represent and warrant to each other that they have not used the services of any broker in regard to this transaction and agree to indemnify and hold each other harmless from any and all claims of brokers arising out of or in connection with the negotiation of or the entering into this Lease, if such broker claims that he acted through or on behalf of such Party.

27.13 Further Assurances. The Parties hereto shall at all times hereafter execute any documents and do any further acts that may be necessary or desirable to carry out the purposes of this Lease.

27.14 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

27.15 Rules of Interpretation. For purposes of this Lease, except where otherwise expressly provided or unless the context otherwise necessarily requires:

(a) references to this Lease shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(b) the words "herein," "hereof," "hereunder" and "herewith" shall refer to this Lease as a whole and not to any particular Section or subsection of this Lease;

(c) the terms "include," "includes" and "including" shall be construed to mean "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;

(d) references to "Sections," "Schedules" or "Exhibits" shall be to Sections, Schedules and Exhibits of this Lease;

(e) the introductory paragraph hereof, all Recitals and all Schedules and Exhibits are incorporated herein;

(f) references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made;

(g) references to a Person include its successors and permitted assigns;

(h) the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa; and

(i) reference to a given governmental rule is a reference to that governmental rule and the rules and regulations adopted or promulgated thereunder, in each case, as amended, modified, supplemented or restated as of the date on which the reference is made.

27.16 No Dedication. Nothing herein shall be construed as the dedication by either Party of Solar Power Facilities to the public or any part thereof. Neither Party shall take any action that would subject the other Party, or the Solar Power Facilities, to the jurisdiction of any Governmental Authority or public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Lease.

27.17 Confidentiality. Except to the extent Rent is included in Lessor's financial statements, Lessor agrees that the terms and conditions of this Lease, and any documentation or information provided by Lessee to Lessor in connection with the Lease (including, without limitation, the various payments due under the Lease) shall be kept confidential, subject to county, state, or federal laws that require disclosure or reporting of any of the foregoing documentation or information; *provided, however,* that Lessor may disclose the contents of this Lease to Lessor's trustees, officers attorneys, accountants, other professional persons, so long as said persons are advised that said information is confidential, and such persons agree to keep such documentation and information confidential. Given the importance of confidentiality to Lessee as to its development of the Solar Power Facilities, Lessor agrees that Lessee shall be entitled to an injunction or other equitable relief against Lessor in the event of a breach by Lessor of this Section 27.17, as well as for economic damages Lessee may incur as a result of such breach (including, without limitation, in the event that Lessor breaches this Section 27.17 by providing confidential information to a company or the agent or representative of a company engaged in solar energy development).

27.18 Governing Law and Jurisdiction. This Lease is governed by and shall be construed in accordance with the law of New Mexico and any legal action to enforce this Lease may only be filed in the First Judicial District Court of the State of New Mexico.

27.19 Governmental Appropriations.

(a) The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Northern New Mexico Board of Regents and, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, the affected Lessor obligations under this Lease shall terminate upon written notice by Lessor to Lessee. Such termination shall be without penalty to the Lessor, and the Landlord shall have no duty to reimburse the Lessee for affected expenditures made in the performance of this Lease. The Lessor is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the Northern New Mexico Board of Regents. The Board of Regent's and/or Legislature's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Lease shall be final and not subject to challenge by the Lessee.

(b) Notwithstanding the provisions of Section 27.19(a), in the event sufficient appropriations and authorizations are not made as aforesaid, Lessor and Lessee acknowledge that the Lease Term shall continue and that this Lease shall not be subject to termination by either Party as a result of insufficient appropriations and authorizations, so long as the conditions of this subparagraph are met. For the avoidance of doubt, during any period arising under the Lease Term where Lessor is not obligated to perform its obligations hereunder by reason of insufficient appropriations and authorizations, Lessee shall have the right, but not the obligation to perform Lessor's obligations, including making payments required to be made hereunder by Lessor, provided that Lessee's actions in this regard are permitted by Applicable

Requirements and law, performed in accordance with applicable requirements and law and in no respect harmful or deleterious to Lessor's real and personal property or Lessor's rights under this Lease. Any payments expended by Lessee in accordance with the foregoing shall not bear interest but shall be permitted to be deducted by Lessee from any Rent payment due by Lessee hereunder following the expenditure of such sums provided that Lessee provides to Lessor at the time such Rent payment is due a certification from an authorized officer of Lessee which sets forth the exact amount of expenditures for which credit against Rent is claimed, Lessee's citation to those provisions of this Lease under which such expenditures were required to be made on Lessor's behalf and third-party or other objective evidence of such payments, such as receipts, contracts for services with receipts, cancelled checks and other proofs.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Lease on the day and date first above:

Northern New Mexico College

By: _____

Name: _____

Title: _____

Date Signed: _____

Syncarpha El Rito, LLC

By: _____

Name: Clifford Chapman

Title: Manager

Date Signed:

List of Exhibits

Schedule A	Rent
Exhibit A	Leased Property
Exhibit B	Access Easement Area
Exhibit C	Construction Easement Area
Exhibit D	Utility Easement Area
Exhibit E	Memorandum of Lease
Exhibit F	Easements
Exhibit G	Non-disturbance, Consent and Recognition Agreement

Schedule A**Rent**

Rent shall be payable according to the payment schedule copied below.

Year	Rent
1	\$55,000.00
2	\$4,416.00
3	\$4,416.00
4	\$4,416.00
5	\$4,416.00
6	\$4,416.00
7	\$4,416.00
8	\$4,416.00
9	\$4,416.00
10	\$4,416.00
11	\$4,416.00
12	\$4,416.00
13	\$4,416.00
14	\$4,416.00
15	\$4,416.00
16	\$4,416.00
17	\$4,416.00
18	\$4,416.00
19	\$4,416.00
20	\$4,416.00
21	\$4,416.00
22	\$4,416.00
23	\$4,416.00
24	\$4,416.00
25	\$4,416.00
26	\$4,416.00
27	\$4,416.00
28	\$4,416.00
29	\$4,416.00
30	\$4,416.00

Exhibit A**Depiction of Leased Property**

Lessor is the owner of land in the unincorporated community of El Rito, Rio Arriba County, New Mexico located on a parcel of land off State Highway 554 and being shown to have a parcel identification number of [XXXXXXX] and being more specifically described as lands within Section 10, Township 24 North, Range 7 East, Track 38 (the "Owner's Lot"). Lessee desires to lease a portion of Owner's Lot to Lessee, which portion is approximately 14+/- acres and is more particularly depicted below in red outline (the "Leased Property").

[Metes and Bounds To Be Populated Later]

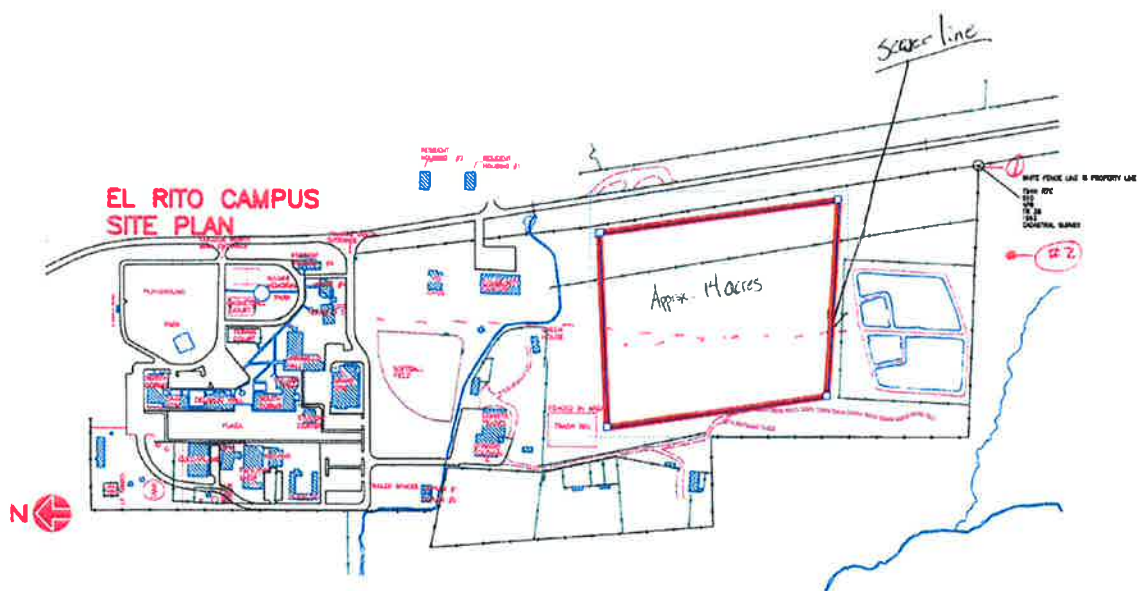


Exhibit B**Depiction of Access Easement Area**

The Access Easement Area depicted below in red outline is subject to change. The Access Easement Area shall be surveyed at Lessee's cost and the metes and bounds description of such Access Easement Area resulting from such survey shall be incorporated into and made part of the Access Easement Agreement.

[Metes and Bounds To Be Populated Later]

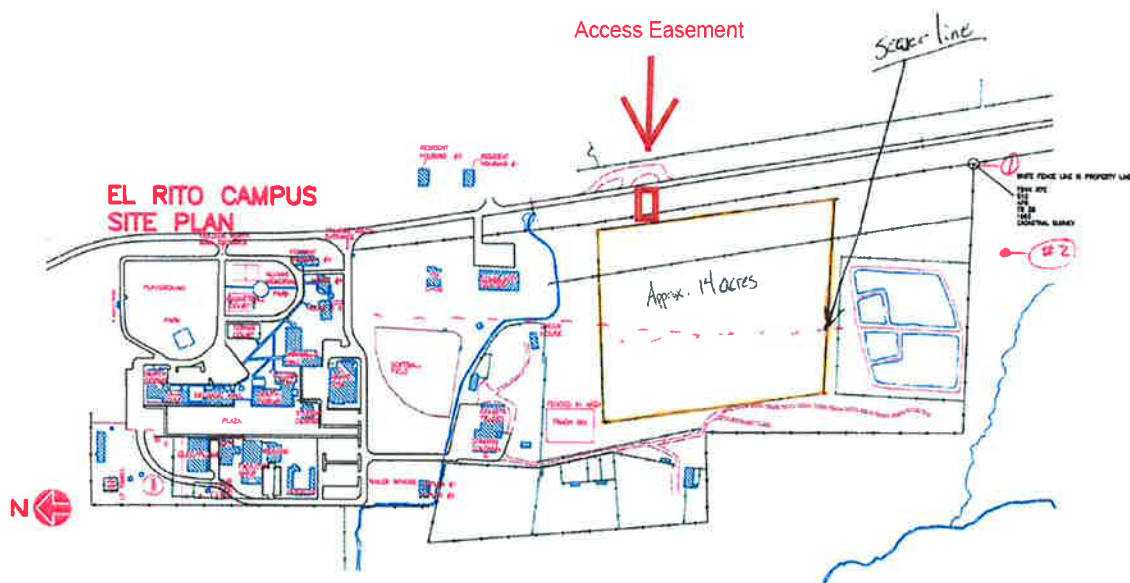


Exhibit C

Depiction of Construction Easement Area

The Construction Easement Area depicted below in red outline is subject to change. The Construction Easement Area shall be surveyed at Lessee's cost and the metes and bounds description of such Construction Easement Area resulting from such survey shall be incorporated into and made part of the Construction Easement Agreement.

[Metes and Bounds To Be Populated Later]

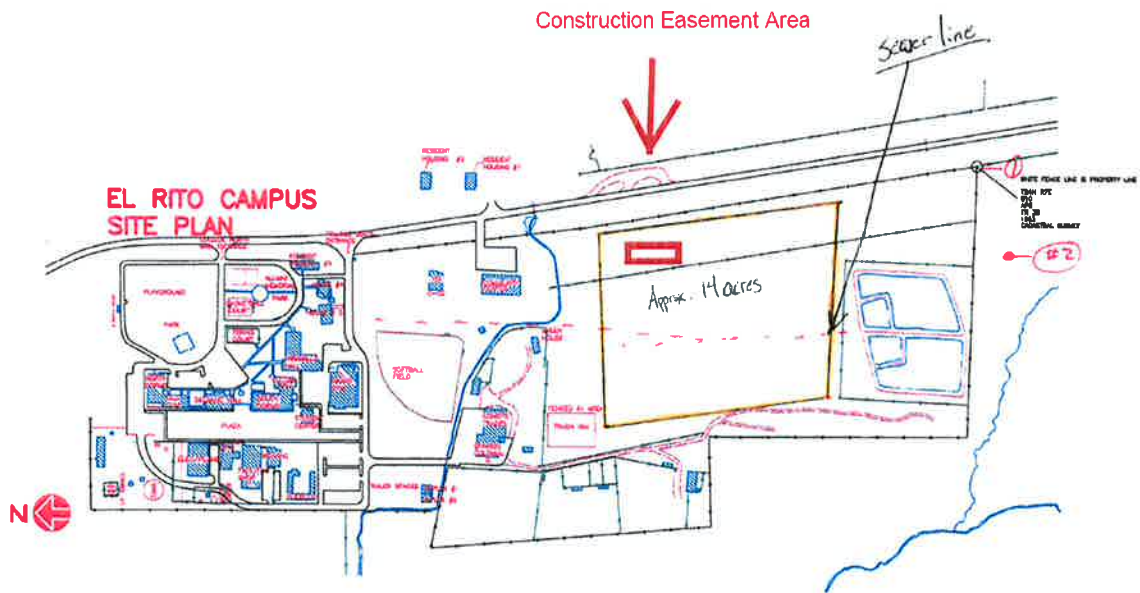


Exhibit D**Depiction of Utility Easement Area**

The Utility Easement Area depicted below in red outline is subject to change. The Utility Easement Area shall be surveyed at Lessee's cost and the metes and bounds description of such Utility Easement Area resulting from such survey shall be incorporated into and made part of the Utility Easement Agreement.

[Metes and Bounds To Be Populated Later]

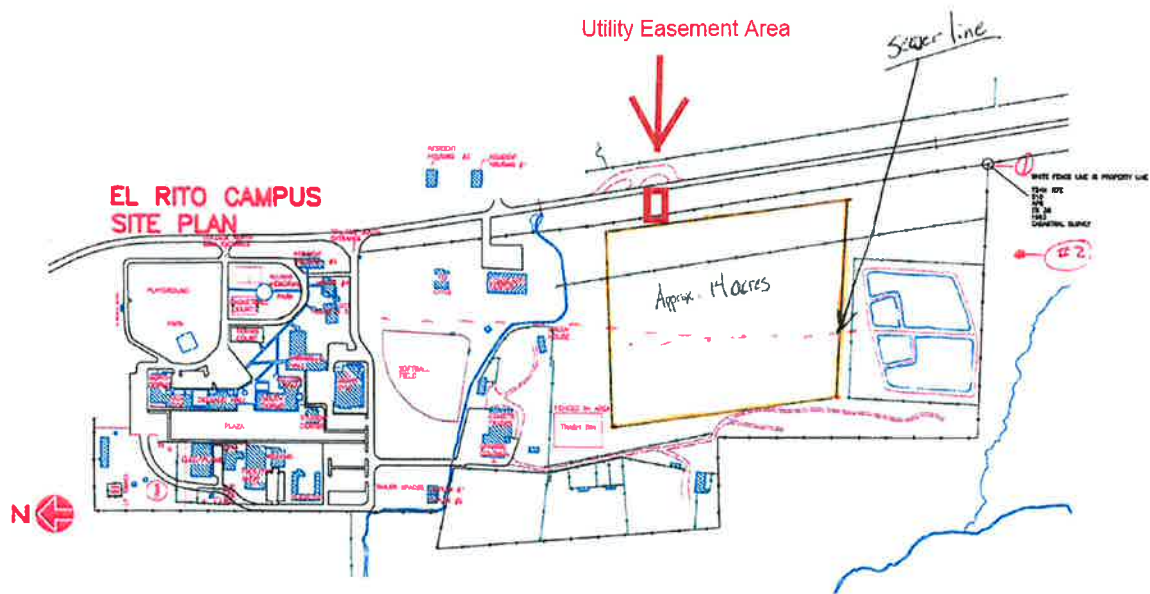


Exhibit E**Memorandum of Lease**

This Memorandum of Lease (this “**Memorandum**”) is made, dated and effective as of the [XX] day of [XXXX], [XXXX] by and between Northern New Mexico College (the “Lessor”), and Syncarpha El Rito, LLC, a Delaware limited liability company (together with its successors and permitted assigns, “Lessee”) with reference to the following facts:

RECITALS

Lessor is the owner of land in the unincorporated community of El Rito, Rio Arriba County, New Mexico located on a parcel of land off State Highway 554 and being shown to have a parcel identification number of [XXXXXXXX] and being more specifically described as lands within Section 10, Township 24 North, Range 7 East, Track 38 (the “Owner’s Lot”). Lessee desires to lease a portion of Owner’s Lot to Lessee, which portion is approximately 14+/- acres and is more particularly identified and described on **Exhibit A** attached hereto (the “Leased Property”). In accordance with that certain Lease Agreement by and between the Lessor and Lessee dated [XXXXXX] [XX], [XXXX] (the “Lease”). Lessor and Lessee desire to have this Memorandum recorded in the Official Records of Rio Arriba County, New Mexico in order to put interested parties on notice of the Lease.

NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

Lease of the Property. The initial Lease term shall commence on the [XX] day of [XXXX], [XXXX] and shall be for an initial term (without giving effect to any renewal term) that expires thirty (30) years from the Commercial Operation Date (as defined in the Lease) (the “**Initial Lease Term**”). Subject to Lessor’s written acceptance of extension request, Lessee shall have the right and option, by giving written notice to Lessor at least six (6) months prior to the end of (i) the Initial Lease Term, to request the extension of the term of the Lease for five (5) years (the “**First Renewal Term**”); (ii) the First Renewal Term, to request the extension of the term of the Lease for five (5) years (the “**Second Renewal Term**”); and (iii) the Second Renewal Term, to request the extension of the term of the Lease for five (5) years (the “**Third Renewal Term**”). The Lease is incorporated herein by this reference.

Information. Any party who is interested in acquiring an interest in the Property should contact the Lessor and the Lessee as follows:

if to Lessor:

Northern New Mexico College
921 N. Paseo de Oñate
Española, New Mexico 87532

if to Lessee:

Syncarpha El Rito, LLC
250 W 57th Street, Suite 701
New York, New York 10107
Attention: Clifford Chapman

IN WITNESS WHEREOF, Lessee and Lessor have executed this Memorandum the day and date first above:

Northern New Mexico College

By: _____

Name: _____

Title: _____

Date Signed:

Syncarpha El Rito, LLC

By: _____

Name: Clifford Chapman

Title: Manager

Date Signed:

[ADD NOTARY ACKNOWLEDGEMENTS & EXHIBIT A DESCRIPTION]

Exhibit F**Easements**

1. CONSTRUCTION LAY DOWN AGREEMENT made, dated and effective as of the [XX] day of [XXXXX], [XXXX] by and between Northern New Mexico College (the “Grantor”), and Syncarpha El Rito, LLC, a Delaware limited liability company (together with its successors and permitted assigns, “Grantee”) (Form to be negotiated).
2. NONEXCLUSIVE ACCESS EASEMENT AGREEMENT made, dated and effective as of the [XX] day of [XXXXX], [XXXX] by and between Northern New Mexico College (the “Grantor”), and Syncarpha El Rito, LLC, a Delaware limited liability company (together with its successors and permitted assigns, “Grantee”) (Form to be negotiated).
3. UTILITY ACCESS EASEMENT AGREEMENT made, dated and effective as of the [XX] day of [XXXXX], [XXXX] by and between Northern New Mexico College (the “Grantor”), and Syncarpha El Rito, LLC, a Delaware limited liability company (together with its successors and permitted assigns, “Grantee”) (Form to be negotiated).

Exhibit GNon-disturbance, Consent and Recognition Agreement

Record and Return to:

NON-DISTURBANCE, CONSENT AND RECOGNITION AGREEMENT

THIS **NON-DISTURBANCE, CONSENT AND RECOGNITION AGREEMENT** ("Agreement"), made and entered into this [XX] day of [XXXX], [XXXX] is by and among Northern New Mexico College (the "Lessor") as the legal owner of land in the unincorporated community of El Rito, Rio Arriba County, New Mexico located on a parcel of land off State Highway 554 and being shown to have a parcel identification number of [XXXXXXXX] and being more specifically described as lands within Section 10, Township 24 North, Range 7 East, Track 38 (the "Lessor's Lot"); Syncarpha El Rito, LLC a Delaware limited liability company (together with its successors or assigns, "Assignor") has leased a portion of Owner's Lot from Lessor, which portion is approximately 14+/- acres and is more particularly identified and described on **Exhibit A** attached hereto (the "Leased Premises") in accordance with that certain Lease Agreement by and between the Lessor and Assignor dated [insert Effective Date] (the "Lease"); and [LENDER/LEASEHOLD MORTGAGE], a New York corporation (the "Counterparty"), in its capacity as assignee of the Lease. Lessor, Assignor, and Counterparty are each a "Party" and are collectively the "Parties".

RECITALS

WHEREAS, Lessor and Assignor have entered into the Lease pursuant to which Assignor leases the Leased Premises from Lessor;

WHEREAS, Lessor has agreed in the Lease, as set forth in and subject to the terms of the Lease, that Assignor shall have the right to install an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, transformers, disconnects, combiners, switches, wiring devices and wiring on the Leased Premises for a photovoltaic system as more particularly described in the Lease (the "System");

WHEREAS, concurrently with its execution of this Agreement, Counterparty and Assignor are entering into a certain [Loan/Credit Agreement] (as amended, restated, replaced and/or modified from time to time, the "Loan Agreement") pursuant to which Assignor has agreed to borrow from Counterparty, and Counterparty has agreed to loan to Assignor, the sum of [\$ insert sum] (\$ •) on the terms and conditions set forth therein.

WHEREAS, in consideration of, and as security for, Assignor's obligations under the Loan Agreement, Counterparty requires that Assignor execute and deliver to Counterparty on even date herewith that certain Pledge and Security Agreement (the "Pledge") pursuant to which Assignor shall grant to Counterparty a first lien security interest in the System and other collateral related thereto;

WHEREAS, further in consideration of, and as security for, Assignor's obligations under the Loan Agreement, Counterparty requires that Assignor execute and deliver to Counterparty on even date herewith that certain Leasehold Mortgage (the "Mortgage") pursuant to which Assignor shall mortgage and, for collateral purposes, assign, transfer and convey to Counterparty all of Assignor's rights, title and interest in and under the Lease (the "Assigned Interest") (the Pledge and the Mortgage, together with all ancillary documents thereto executed by Assignor for the benefit and security of Counterparty, are hereinafter collectively referred to as the "Counterparty Documents");

WHEREAS, as a condition to entering into the Counterparty Documents, Counterparty requires that Assignor and the Lessor enter into this Agreement with Counterparty on the terms specified herein.

NOW, THEREFORE, for good and valuable consideration of the promises and of the mutual covenants, agreements and benefits herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. **Acknowledgments, Consents and/or Agreements of Assignor and Lessor.** Assignor and Lessor each hereby acknowledge and agree that, until the expiration or earlier termination of the Lease (the "Term"):

(a) *Consent to Leasehold Mortgage.* Subject to the provisions hereof and of the Lease, Lessor hereby consents to the Mortgage.

(b) *Non-Disturbance of Lease.* Except as set forth in, and subject to and without wavier of the provisions of the Lease, Lessor shall not materially disturb or otherwise materially impair Assignor's possession and use of the Leased Premises or its rights under the Lease;

(b) *Non-Interference with System.* Except as set forth in, and subject to and without waiver of the provisions of the Lease, Lessor shall not (i) exercise the inspection rights, repair rights, or other rights related to the Leased Premises under the Lease in any manner that materially interferes with, materially tampers with, or otherwise materially disturbs (i) the development, construction, installation, use, ownership, operation, maintenance, repair, replacement and removal of the System by Assignor and (ii) Assignor's quiet enjoyment of the Leased Premises;

(c) *System Owned Solely by Assignor.* The System is, and at all times shall be, personal property owned by Assignor (free of any and all mortgages, liens, pledges, assignments, charges, security interests, title retention agreements, levy's, executions, seizures, attachments, garnishments or other encumbrances of any kind, collectively ("Liens") other than liens in favor of Counterparty under the Counterparty Documents) and not by any other Person and shall not constitute nor, except for tax purposes, be deemed to constitute any of the real property, quasi-real property or other assets comprising any part of the Leased Premises;

(d) *Recordation of this Agreement.* Counterparty may record this Agreement in the Register of Deeds Office of Rio Arriba County, New Mexico at the cost and expense of Assignor;

(e) *No Liens by Lessor.* To the extent permitted by law, Lessor shall not place any Liens of any kind on any of the System;

(f) *Assignor May Assign Lease to Counterparty.* Lessor hereby agrees that Assignor may, subject to and without waiver of the provisions of the Lease, assign its rights, title and interest in, and grant a Lien on, the Lease, the System, and on the Assigned Interest to or for the benefit of Counterparty pursuant to the Counterparty Documents;

(g) *Counterparty May Assign Assigned Interest and System.* Lessor and Assignor agree that Counterparty may, subject to and without waiver of the provisions of the Lease, assign its rights, title and interest in the System or in the Assigned Interest; and

(h) *Leasehold Mortgagee.* During the Term of the Lease, Counterparty shall, subject to and without waiver of the provisions of the Lease, be entitled to all of the rights and privileges of a Financing Party under the Lease.

II. **Transfers Do Not Affect Project Documents.** Assignor and Counterparty agree that, if Lessor assigns or transfers to any Person (whether directly or indirectly, by merger or consolidation, by operation of law or otherwise) all or part of Lessor's interests in (i) the Leased Premises or (ii) rights arising under the Lease, then: each of the Counterparty Documents shall not be terminated and Assignor's rights,

interests and remedies thereunder shall not be adversely affected, altered or impaired, and each Counterparty Document shall continue in full force and effect.

III. **Counterparty's Rights Regarding System and Other Matters.** After the date hereof, Assignor's exercise of any rights to terminate the Lease shall not be effective unless consented to in writing by Counterparty. Further, after the date hereof, no amendment to the material terms of the Lease shall be made by Assignor unless consented to in writing by Counterparty, which consent shall not be unreasonably withheld, conditioned or delayed. All rights of Assignor under the Lease, including, without limitation, any renewal or extension right, shall be exercisable by Counterparty, and Lessor shall accept the exercise of any such rights by Counterparty, provided they are exercised in accordance with and subject to the provisions of the Lease. Without waiver of any rights, and subject to and without waiver of the provisions of the Lease, Lessor acknowledges that it has been informed that, under the Counterparty Documents, Counterparty has reserved a right to enter and take (or not) take possession of the Leased Premises and the System, and to repossess and operate the System on the Leased Premises, and/or repossess and remove the System from the Leased Premises at any time and without prior notice to Assignor, and otherwise to enforce and exercise any and all other rights and remedies under the Counterparty Documents with respect to the System. . Unless assumed by Counterparty, in no event shall Counterparty be liable to the Lessor for any unperformed obligations of Assignor to Lessor or any other Person, whether under the Counterparty Documents or otherwise.

IV. **Disclaimer of Interest in System.** Lessor hereby (i) disclaims any ownership interest in the System; (ii) acknowledges that the Lease shall not be construed as subjecting the System, in any manner at any time, to a lien; and (iii) acknowledges that, for non-tax purposes, the System is not, and at all times shall never be, or deemed to be, real estate or a part of or affixed to the Leased Premises.

V. [INTENTIONALLY DELETED]

VI. **Representations and Warranties.** Lessor represents, covenants and agrees as follows:

(i) **Organization; Power and Authority.** Lessor (i) has all requisite organizational or other power and authority under the laws of **New Mexico** to enter into this Agreement; and (ii) has the power and authority to execute and deliver this Agreement.

(ii) **Authorization; No Conflict.** The Lessor has duly authorized, executed and delivered this Agreement.

(iii) **Liens.** To the best of its knowledge, Lessor has not, since the Effective Date of the Lease (as "Effective Date" is defined in the Lease), placed any Liens of any kind on the System, and any such Liens hereafter placed by Lessor, to the extent permissible by law, shall be subject and subordinate to the Mortgage.

(iv) **Encumbrance of Fee Interest.** Lessor agrees that if it elects to encumber the fee interest in the Leased Premises with a mortgage, Lessor will require the mortgagee to enter into an agreement with Counterparty to evidence the subordination of any lien relating thereto to the Mortgage.

(v) **Lease in Full Force and Effect.** The Lease has not been terminated or suspended.

VII. **Electronic Signatures.** Any signature page of any such counterpart of this Agreement, or any electronic facsimile thereof, may be attached or appended to any other such counterpart to complete a fully executed counterpart of this Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party. Notwithstanding the foregoing, all Parties acknowledge that this Agreement may be recorded in the Register of Deeds Office of Rio Arriba County, New Mexico, and that, in order to facilitate such recordation, each Party's original 'ink' signature and notarization must be provided.

VIII. Headings. The headings and captions of this Agreement are for convenience only and are not a part of this Agreement, and do not in any way define, limit, describe, or amplify the terms or provisions of this Agreement or the scope or intent thereof.

IX. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of the same. Each and every provision of this Agreement shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

X. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable laws, but if any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable laws, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, without affecting the remainder of such provision or the remaining provisions of this Agreement.

XI. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

XII. Governing Law. This Agreement is governed by the laws of the State of New Mexico and any dispute arising hereunder shall be brought solely in the state courts of the State of New Mexico, First Judicial District, to whose jurisdiction the Parties hereby assent.

XIII. Entire Agreement. This Agreement contains the entire agreement between the Parties as to the subject matter hereof, and cannot be changed, modified, waived or canceled except by an amendment to this Agreement made in writing and executed by the Party against whom enforcement of such modification, change, waiver or cancellation is sought.

XIV. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the Parties hereto and their respective successors and assigns.

XV. Notices. All notices or demands under this Agreement shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid, or (c) when properly transmitted by facsimile with receipt confirmation, in each case addressed to the party to be notified as follows:

Lessor:

Northern New Mexico College
921 N. Paseo de Oñate
Española, New Mexico 875328

Assignor:

Syncarpha El Rito, LLC
250 West 57th Street, Suite 701
New York, New York 10107
Attention: Clifford Chapman

Counterparty:

[XXXXXXXXXXXX]
[XXXXXXXXXXXX]
[XXXXXXXXXXXX]

or to such other address as each party may designate for itself by like notice.

[Signatures and Notarial Acknowledgements Appear on the Following Pages.]

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the undersigned, by its officer thereunto duly authorized, has duly executed this **AGREEMENT** as of the date first above written.

LENDER:

By: _____
 Name: _____
 Title: _____

LESSOR:

Northern New Mexico College

By: _____
 Name: _____
 Title: _____

ASSIGNOR:

Syncarpha El Rito, LLC

By: _____
 Name: _____
 Title: _____

STATE OF _____

COUNTY OF _____

CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath, to my satisfaction, that this person: (a) is named in and personally signed the attached document as _____ of _____, a _____, and (b) signed and delivered this document as his or her act and deed on behalf of said company.

WITNESS my hand and official seal.

 Notary Public
 My Commission Expires:

STATE OF _____

COUNTY OF _____

CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath, to my satisfaction, that this person: (a) is named in and personally signed the attached document as _____ of _____, a _____, and (b) signed and delivered this document as his or her act and deed on behalf of said company.

WITNESS my hand and official seal.

Notary Public
My Commission Expires:

STATE OF _____

COUNTY OF _____

CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath, to my satisfaction, that this person: (a) is named in and personally signed the attached document as _____ of _____, a _____, and (b) signed and delivered this document as his or her act and deed on behalf of said company.

WITNESS my hand and official seal.

Notary Public
My Commission Expires:

Exhibit A

Entire Parcel of Real Property Owned by Lessor

[To Be Populated Later]

Exhibit B

Leased Premises Metes and Bounds Description

[To Be Populated Later]



MEMORANDUM

To: Northern New Mexico College Board of Regents

From: Ricky Bejarano

Date: August 18, 2017

Re: Code of Conduct

Issue

The Governmental Conduct Act (GCA), NMSA 1978, Chapter 10, Article 16, requires that all local government agencies of the state adopt a general code of conduct based on the principles set forth in the GCA.

Overview

Until the GCA was amended in 2011, most of its provisions applied only to state officers and employees. In 2011, the law's coverage was expanded to officers and employees of all political subdivisions of the state and their agencies. Local government agencies were required to adopt a general code of conduct for public officers and employees who receive compensation in the form of salary or is eligible for per diem or mileage.

The audit report for the year ending June 30, 2016, noted in finding 2016-014, that NNMC was in non-compliance with the GCA.

Once approved by the Board of Regents, the Human Resources Department will distribute the approved Code of Conduct to all employees and will require a signed acknowledgement.

Recommendation

Staff recommends that the Board of Regents approve the attached Code of Conduct.

CODE OF CONDUCT

1. GENERAL POLICY

The following code of Conduct is applicable to all employees of Northern New Mexico College:

1.1 Conflict of Interest

1.1.1 All College employees are required to report, in writing, to the President any outside employment, research and consulting activities, substantial interest (greater than 20%) in a business; and any financial interest that an employee has reason to believe may affect the College.

1.1.2 All College employees shall disqualify themselves from any College proceedings that involve a business in which the employee or an employee's family member has a financial interest.

1.1.3 No College employee shall acquire a financial interest in a business at a time when he/she has reason to believe that it will be directly affected by his/her official actions.

1.1.4 No College employee shall use confidential information acquired in the course of their employment, or take an official act for their or another's private or personal gain.

1.1.5 No employee shall seek or accept any favor or gratuity from any person, firm, or corporation which is engaged in or attempting to do business with the College or any agency of state, or local governments which might affect the employee's judgment in the impartial performance of duties.

1.1.6 No employee shall purchase or influence the purchase of services, equipment, instruments, materials, or other items for the College or its programs from any firm in which the employee has a financial interest.

1.1.7 No employee shall permit transmission to a private firm, or make other use for personal gain, of College productions, research results, materials, records, or information that are not made generally available.

1.1.8 No employee shall let an outside activity interfere with his/her primary obligation to the College. This does not mean that the employee may not enter into an outside consulting activity, but, if he/she does, it must not be allowed to interfere with College assignments.

1.2 For the purposes of this policy, the following definitions apply:

1.2.1. "Family member" means spouse, domestic partner, parents, children, siblings, brother-in-law, sister-in-law, step brother, step sister, by blood or marriage.

1.2.2. "Financial Interest" means an interest held by an employee or the employee's family member that is:

- (1) an ownership interest in business; or
- (2) any employment or prospective employment for which negotiations have already begun.

1.2.3. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority

2. General Provisions

2.1 Employees shall be truthful and honest.

2.2 No employee shall engage in any discriminatory conduct.

2.3 Employees shall be patient, dignified, courteous and respectful.

2.4 Employee shall not misappropriate or misuse public property or public funds.

2.5 Employees shall comply with any code of ethics applicable to their particular occupation or profession.

3. Solicitation

3.1 Employees may not be solicited, nor solicit, at any time during working hours, except when it is conducted by a College organization

3.2 For the purpose of this policy, solicitation includes, but is not limited to, electioneering of any kind.

4. Political Activities

4.1 The College recognizes the legitimacy and social importance of political activity by employees. College employees may engage in lawful political activities. However, such activity, like any other personal, non-official undertaking must be done on the employee's own time and should not interfere with College duties. Employees may not:

- Campaign during work hours.
- Use College supplies or equipment for campaign purposes.
- Represent their political views or the views of any candidate as being those of the College.
- Use employee mailing labels (either home or office addresses) produced by the College for distributing campaign materials.
- Distribute campaign material through campus mail unless it has been received by a federal post office and is properly postmarked.

New Mexico

GOVERNMENTAL CONDUCT ACT *COMPLIANCE GUIDE*

PROVIDED BY THE OFFICE OF THE NEW MEXICO ATTORNEY GENERAL



THE GOVERNMENTAL CONDUCT ACT

NMSA 1978, Chapter 10, Article 16

Compliance Guide

HECTOR BALDERAS
Attorney General

ACKNOWLEDGEMENT

Thank you to Paul Biderman, J.D., Retired Research Professor at the University of New Mexico School of Law, former New Mexico Secretary of Energy and Minerals and former Assistant Attorney General, and Clifford M. Rees, J.D., former Assistant General Counsel for the New Mexico Department of Health and former General Counsel for the New Mexico Department of Finance and Administration, for their excellent work researching and drafting the Attorney General's Governmental Conduct Act Compliance Guide.

Second Edition

2015



Mission

Our mission is to protect New Mexicans in order to make our communities safer and more prosperous. We prosecute criminal and civil offenses; advocate for consumers and those without a voice; empower the public by proactively educating them and connecting them with beneficial resources; and serve as legal counsel for the State and its agents.

Vision

We aspire to be an innovative leader in New Mexico, recognized for proactively finding solutions and responding to evolving needs by leveraging partnerships with individuals, community organizations, government agencies, and businesses.

As Attorney General, I have made a commitment to the public safety and health of all New Mexico families. Transparency and accountability support democratic government “of the people, by the people, for the people” and democracy fosters the safety and health of our communities.

The New Mexico Governmental Conduct Act (GCA) governs the ethical and legal conduct of public officers and employees at all levels of government. The GCA provides guidance to those trusted to serve the public interest by establishing parameters for ethical and legal conduct. The GCA can also be used by members of the public to evaluate the work of those entrusted with public trust. Along with the Inspection of Public Records Act and Open Meetings Act, the GCA ensures that government functions are carried out in the open, in an honest and fair manner, by people who remain accountable to the public.

An ethical and democratic government encourages participation by the people; it enables people to examine how public officials and employees perform their public duties, and holds all government actors to equally high standards. When public officers and employees know that the public joins them in keeping government open and honest, everyone is safer and the government is healthier.

This Guide is written to help the public understand the standards of conduct expected of government officials and employees and can be used to evaluate those government officials and employees while they carry out their duties and responsibilities.

HECTOR BALDERAS

Attorney General of New Mexico

2015

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I. INTRODUCTION

The Governmental Conduct Act, NMSA 1978, Chapter 10, Article 16 (“GCA”), was enacted in 1967 as the Conflicts of Interest Act. The current title was enacted as part of an extensive revision to the law in 1993. The law was not significantly amended again until 2007. Those amendments were followed by additional changes in 2009 and 2011.

Until the GCA was amended in 2011, most of its provisions applied only to state officers and employees. In 2011, the law’s coverage was expanded to officers and employees of all political subdivisions of the state and their agencies. The law’s expanded coverage made it crucial that all state and local government officers and employees in New Mexico understand their ethical responsibilities under the GCA, as well as the specific prohibitions and limitations that ensure that public officers and employees conduct themselves solely in the interest of the public. To that end, the Attorney General has issued this Compliance Guide, which is intended to explain the provisions of the GCA and clarify their application to covered officials and employees. In addition, the Guide will enable members of the public to become more knowledgeable about the standards of conduct the GCA requires and assist them in holding their representatives in government accountable to those standards.

If you would like additional copies of this Guide, or if you have any questions about the Guide or the applicability of the GCA, please contact the Open Government Division of the Office of the Attorney General, P.O. Drawer 1508, Santa Fe, NM 87504-1508, or by telephone at 505-827-6070. The Guide is also posted on the Office of Attorney General’s website at www.nmag.gov.

II. GOVERNMENTAL CONDUCT ACT

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act."

10-16-2. Definitions.

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$ 1,000) with a state or local government agency for:

(1) the rendition of services, including professional services;

(2) the furnishing of any material, supplies or equipment;

(3) the construction, alteration or repair of any public building or public work;

(4) the acquisition, sale or lease of any land or building;

(5) a licensing arrangement;

(6) a loan or loan guarantee; or

(7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business or property; or

(2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official

act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$ 100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

10-16-4.2. Disclosure of outside employment.

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

10-16-4.3. Prohibited employment.

It is unlawful for a state agency employee or local government agency employee

who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

10-16-6. Confidential information.

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

10-16-7. Contracts involving public officers or employees.

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee

of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

10-16-8. Contracts involving former public officers or employees; representation of clients after government service.

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$ 1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of

a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

10-16-11. Codes of conduct.

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency

code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training biennially.

10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than

those required by the Governmental Conduct Act.

10-16-13. Prohibited bidding.

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

10-16-13.1. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible

personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer

of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

10-16-13.3. Prohibited contributions; financial service contractors.

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$ 100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

10-16-14. Enforcement procedures.

A. The secretary of state may refer suspected violations of the Governmental Conduct Act to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is

grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$ 1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

10-16-18. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred and fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

III. THE GOVERNMENTAL CONDUCT ACT: AN OVERVIEW

A. Earning the Public Trust

The Law - Section 10-16-3

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

Commentary

This part of the GCA summarizes why we have ethics laws: to help ensure the public's trust in the honesty of our elected and appointed public officials. When members of the public trust their government to act with integrity, they are more likely to vote, to voice opinions on issues, to resolve disputes through the courts and administrative agencies, to pay their taxes fully and otherwise comply with the law. Their trust in government depends upon the belief that government will keep its promises, give out truthful and complete information, act with transparency, distribute public benefits and burdens fairly, and use resources funded by the public for the benefit of the community. The public's belief in the integrity of their government will be determined entirely by the acts of its elected officials and appointed

personnel, from the highest elected officials forging policy, to the thousands of public employees diligently conducting the daily work of government.

B. Who is Covered by the GCA?

The Law - Sections 10-16-2

As used in the Governmental Conduct Act: ...

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state.

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators.¹

K. "state agency" means any branch, agency, instrumentality or institution of the state.

Commentary

Since it first became law in 1993, the GCA has been expanded to address an increasing number of ethical issues by a growing list of public employees. Over time the definition of persons covered by the Act has been expanded to include judges, members of public boards and commissions, employees of state

¹Except where the context suggests otherwise, this Compliance Guide uses the terms "employee," "officer" and "official" interchangeably to refer to public officers and employees covered by the GCA.

institutions, local government employees, and, for certain purposes, legislators. The addition of local government officers and employees in 2011 extended the GCA's requirements to thousands of elected and appointed officers and employees who work for political subdivisions, including municipalities, counties, school boards, local housing authorities, mutual domestic water consumers associations and Spanish and Mexican land grants.

With the 2011 amendments to the GCA, virtually every person working in every government entity within New Mexico that is created by state law or local ordinance is now under the GCA. This includes everyone working in government agencies, boards and commissions, public educational institutions at all levels, state hospitals and correctional institutions, all judges and court staff, and legislative staff. Even volunteers who are eligible to receive per diem and mileage compensation for attending meetings of government boards and commissions, at any level of government, are covered. The only exception is that elected legislators are not covered in general, but certain provisions of the GCA specifically apply to them, their families or their family businesses, as will be shown in later sections of this Compliance Guide.

The GCA applies only to New Mexico state and local government officers and employees. It does not cover officers and employees of the federal government, governments of Native American tribes and pueblos or governments of states other than New Mexico.

Example 1:

A member of a local school board receives no salary, but is eligible for per diem and mileage reimbursement. This member never asks for reimbursement of his travel expenses,

however. The member is subject to the GCA because he is eligible for reimbursement, whether or not he ever claims it.

Example 2:

An employee of a state agency works in a bureau that is funded totally with federal grants. Even though the GCA does not apply to federal agencies, all state or local government employees are subject to the GCA, regardless of their funding source.

Example 3:

A non-profit agency receives a major portion of its program's budget from state funds. The director of the agency pressures an employee to support a certain political candidate. While the director's actions would be a violation of the GCA in a state or local government agency, the managers of the non-profit agency are not subject to the GCA in exercising their supervision of employees even though the non-profit agency receives public money.

C. Basic Principles of Conduct Required of Public Officials

The GCA helps to ensure that the people who operate state and local government and public institutions act honestly, diligently, transparently, fairly, within the limits of their lawful authority, and with integrity. The key that binds all these strands together is the concept of *rule of law*, sometimes referred to as *a government of laws, not of men and women*. What these phrases signify is that the people who make and carry out the laws do so according to binding legal principles, not according to their personal interests and whims. Adherence to the rule of law is necessary for fair decisions by the government, respect for the government, meaningful vot-

ing and public petitions to the government, and the existence of personal liberties.

When conflicts exist about what action government should take, as in disputes over zoning variance requests, for example, not every citizen may be happy with the outcome. A businessperson proposing a development may feel that the zoning authority's decision is too restrictive, while local residents may object to the same decision as disruptive of their quiet enjoyment of their existing lifestyle. It is impossible for officials to please everyone, and officials may hold and ultimately act on values that some of their constituents reject. But every citizen is entitled to the assurance that, like it or not, each decision that public officials make and the actions taken to implement that decision have not resulted from payoffs, personal or family interests, or secret deals, but rather from honest consideration of the facts and the officials' beliefs that they are acting in the best interest of the community.

This Compliance Guide will now look in greater detail at specific rules established by the GCA designed to protect the public from abuses by public servants, and at how these rules are enforced. We will also look at other New Mexico statutes that work with the GCA to create our state's system of public ethics law.

IV. HOW DOES THE GOVERNMENTAL CONDUCT ACT PROTECT THE PUBLIC FROM IMPROPER INFLUENCE?

A. What Constitutes Improper Influence?

The Law – Section 10-16-3

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

The Law – Section 10-16-2

As used in the Governmental Conduct Act: ...

H. “official act” means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.

Commentary

Nothing undermines confidence in government more than a real or perceived culture of corruption—where public assets, services and powers are, or appear to be, for sale by the officials to whom they have been entrusted. When officials are or seem to be “lining their own pockets” or enriching their political treasuries in exchange for conducting the business of government, the public becomes appropriately outraged. Government officials and employees are supposed to manage public property and provide ser-

vices by applying the law as it is written and in ways that best serve the public interest - not to allow officials or their friends or families to profit personally by dealing in their public trust.

The GCA was adopted primarily to erect a wall against this kind of abuse of power. It makes it a fourth degree felony for any public officer or employee or legislator to ask for or receive any money, thing of value, or a promise of any money or thing of value in exchange for the promised performance of an official act. It also makes it illegal for a person to offer any money or other thing of value in exchange of the promised performance of an official act.² A violation of this provision is punishable by eighteen months imprisonment and a fine not to exceed \$5,000. See NMSA 1978, § 31-18-15.

For a violation of Section 10-16-3(D) to occur, there must be a promised performance of an official act in exchange for the payment of money or other thing of value.³ The GCA defines an “official act” as a decision or other action in a matter that involves the

² Similar misconduct, including bribery, is a crime under several other state laws. For example, see NMSA 1978, §§ 30-24-1 and -2.

³ As discussed below, the GCA includes an absolute prohibition against payments and gifts to certain government officials and employees even if the gifts are not conditioned on the promised performance of an official act. In addition, the Gift Act, NMSA 1978, §§ 10-16B-1 to -4, restricts gifts lobbyists and similar donors may make to legislators and other public officials. See Appendix I, Part A.

use of discretionary authority. A government official performs an “official act” when the official uses his or her discretion to make a decision or take action that the official determines is appropriate based on the applicable facts and circumstances. In contrast, a public officer or employee who has no choice but to grant an application, for example, if the applicant meets the criteria specified by law does not have discretionary authority and is not performing an official act for purposes of the GCA.

The GCA does not require that the officer or employee who receives the illegal payment or thing of value personally perform the promised official act. A violation may occur if the officer or employee has sufficient influence or authority to direct another officer or employee to perform an official act on a matter of interest to the person who makes the payment.

Example 4:

The purchaser of a lot goes to a county clerk's office to request copies of a filed deed. The clerk asks for a copying fee, matching the fee schedule posted on the wall. The purchaser says he wants it copied without a fee, and accuses the clerk of demanding a bribe. He finally pays the fee under protest, watches the clerk stamp his check as received, and gets a receipt. The clerk has acted properly. The fee was required by law and the clerk had no discretion to decide whether or not to charge the fee. Accordingly, the fee was not paid or received in exchange for the promised performance of an official act.

Example 5:

The Oil Conservation Division issues permits to drill oil wells. Drilling applications are subjected to close scrutiny by the Division,

which has discretionary authority to grant or deny an application. An oil producer shows up at a district office of the Division to file a request to get a permit to drill a well, says he is new to the State and is introduced to the district director for a courtesy visit in his office. After the director reaches behind him for some literature about his division, he turns back to find an open box that has appeared on his desk. In the box are two matched pearl-handled revolvers. The oil producer says nothing, but smiles. The director asks him to leave and take the box with him, and immediately calls his supervisor. The producer has illegally offered the director something of value by plainly offering the guns to him—even though nothing was said and no cash was offered. It may be a challenge to prove the allegation in a criminal case because nothing specific was requested or promised in exchange for the gift. But since the producer was in the process of filing an application related to his business interests, the director correctly rejected the gift and reported it.

Example 6:

A governor's aide finds himself in debt and in danger of defaulting on his mortgage. Around this time, he is contacted by a long-time friend who owns a construction firm. The friend asks for the aide's help in getting awarded a contract to construct a bridge. Without telling the governor, the aide approaches the agency in charge of awarding the contract. He falsely tells the agency director that the governor really wants his friend to get the contract, in any way they can make that happen. Then the aide asks his friend for a long-term, interest-free loan of a substantial sum that will pay off his mortgage debt. He gets the money and the contractor gets the contract. When the full transaction comes out, however, they both also get jail terms. Even though the payment

was called a loan, the fact that it was offered without interest at a market rate made it a thing of value. The loan was illegal under the GCA because it was made in exchange for the performance of an official act that produced a substantial benefit to the lender.

B. Gifts from Financial Services Companies

The Law – Section 10-16-13.3

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) “anything of value” means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) “contribution” means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

Commentary

Much of the greatest concern in recent years about ethics in New Mexico government has focused on financial services provided to the state, largely because so much money is involved, especially in the state’s pension and permanent funds. States have found that the large fees associated with handling investments from multi-billion dollar funds can be tempting enough to induce some financial firms to engage in unethical tactics. Similarly, the successful marketing of bonds to fund construction projects requires involvement by financial services companies knowledgeable about bond markets, which entitles them to earn substantial fees. Thus, the state legislature enacted a provision of the GCA making it unlawful for any financial services firm to “contribute” money or any other valuable items to a public official with authority over such transactions, or for any such official to accept such a contribution.

For purposes of the prohibition, a contribution of anything of value is a donation or transfer by a financial services provider to a government official without anything in return from the official. Food and refreshments of under \$100 value consumed in a single day are not considered things of value and may be contributed without violating Section 10-16-13.3.

Example 7:

A city financial division manager and the city councilor who heads the finance committee are invited by a bond placement service company to New York City. The company wants to make a presentation to them on

how the company would represent the city's interest if retained. The company offers to pay all their travel expenses and to provide tickets to a Broadway play. The officials must reject all the offered travel and entertainment expenses except for up to \$100 per day in food and refreshments. The city will have to pay for the trip beyond that, and the officials will have to buy their own theater tickets, or the placement service company will have to send their representatives to New Mexico to make the presentation on its behalf.

V. WHAT CONFLICTS OF INTEREST MUST PUBLIC OFFICIALS AND EMPLOYEES AVOID?

A. Public Interest Prevails Over Conflicting Private Interests

The Law - Section 10-16-3(C)

Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

The Law - Section 10-16-4

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new finan-

cial interest will be directly affected by the officer's or employee's official act.

Commentary

These sections from the GCA strongly warn all public officials and employees at any level of New Mexico state or local government against using their public authority to benefit their private financial interests. "Financial interest" for purposes of the GCA is an interest held by an individual or the individual's family that is an ownership interest in business or property or any employment or prospective employment for which negotiations have already begun. The GCA defines "family" as a person's spouse, parents, children or siblings, by consanguinity (blood relationship) or affinity (through marriage). See Section 10-16-2(E), (F).

A public employee who takes an official act primarily to improve the employee's financial interest or position risks a fourth degree felony conviction. Even when the primary motive is something other than benefiting a public employee's financial interest, the GCA generally disqualifies a public employee from taking an official act that directly affects the employee's financial interests, unless the benefit to the public clearly outweighs the financial benefit to the employee. If a public employee has any doubt as to whether the employee should be disqualified from engaging in an official act that has an effect on the employee's financial interest, the best course is full disclosure. As indicated in Section 10-16-3(C), full disclosure of potential conflicts is a primary means of addressing and vetting situations that have the potential for improper self-dealing.

Example 8:

Sitting on huge sums in its permanent funds, a state agency's fund managers advertise for a professional consulting firm to provide advice on how best to invest the money. Several consulting firms apply. The state fund managers secretly agree to hire one consulting firm if it advises large investments in Mutual Fund A. The state fund managers are major shareholders in Mutual Fund A and will share in its profits from this transaction. The fund managers have violated the GCA because they took official action for the primary purpose of enhancing their financial interests and could be subject to imprisonment.

Although the GCA's provisions, including those discussed in this Part, are primarily concerned with financial conflicts of interest, the GCA's ethical principles, including Section 10-16-3(C)'s "guiding principle" of full disclosure, apply to any bias or interest that would adversely affect a government employee's ability to perform the employee's duties exclusively in the public interest. Any time a state or local government employee has a personal interest that could reasonably be perceived as unduly influencing the employee's conduct in a particular matter contrary to the public interest, the employee should disclose the interest, at a minimum, and refrain from acting or participating in the matter, if necessary.

In some cases, laws outside the GCA may dictate a public employee's conduct in the face of a conflict. For example, when acting in a quasi-judicial capacity, the members of a state or local adjudicatory body are subject to Article VI, Section 18 of the New Mexico Constitution, which prohibits a judge from hearing a case "in which either of the parties are related to him by affinity or consanguini-

ty, within the degree of first cousin...." See also Appendix I.B.

For conflicts of interest expressly addressed by the GCA, one way to look at how public officials and employees can avoid those conflicts is to consider the subject in three categories:

- 1) *private business and the public workplace;*
- 2) *outside employment; and*
- 3) *former government employees.*

To those three general categories might be added a fourth, more specific, one:

- 4) *conflicts of interest for legislators.*

We will look at how the GCA protects government employees, commercial interests, and the general public against potential favoritism or abuses of power by banning conflicts in all these categories.

B. Private Business and the Public Workplace

1. Selling products or services at work

The Law - Section 10-16-13.2

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible

personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

Commentary

Public officers and employees, like anyone else, may have hobbies or skills that they wish to share with friends, family and colleagues. It may seem nonintrusive and even a favor to offer to sell handmade crafts to fellow employees, or to others with whom we deal through our work.

But if taken too far, such transactions can become coercive and abusive of authority. For example, employees who seek to supplement their income through profitable sales to the people whom they supervise put their staff in a bind: their employees may worry that turning down the supervisor's offer will lead to less favorable assignments, performance reviews, or other personnel actions. Even solicitations for worthy charities may become unwelcome if accompanied by implications that failure to donate could lead to unfavorable treatment, that those who donate will be favorably treated, or if the solicitations get too persistent. Employee time that is supposed to be devoted to public service may be diverted into private business or efforts on behalf of private charities. Occasionally, solicitations may even violate the law, such as in gambling pools.

The GCA controls some of this behavior by labeling as unlawful certain private dealings in the public workplace. Specifically, a su-

pervisor is prohibited from selling for profit any goods or services to her employees, whether directly or indirectly through her family or any business in which the supervisor has a substantial interest. Nor may a supervisor take a commission or otherwise profit from a sale to an employee she supervises, even if the supervisor does not participate in the transaction directly or indirectly through the supervisor's family or business.

There are two exceptions to the GCA's prohibition against sales to supervised employees. First, the prohibition does not apply if an employee initiates the sale. Second, the law provides a "good faith" defense - if the supervisor did not know that the sale was being made to a supervised employee, the sale does not violate the law.

The restrictions apply to the supervisor, the supervisor's family (spouse, parents, children or siblings), or any business in which the supervisor has a substantial interest. The GCA defines "substantial interest" as an ownership interest of greater than 20%. See Section 10-16-2(L).

Example 9:

A receptionist with no supervisory responsibility in a municipal government office sews angel dolls for her family around Christmas-time. She shows them to her co-workers and several ask if they can buy one. Realizing that her handiwork is in demand, she posts a sign in the office break room offering the dolls for sale. The sales do not violate her office's policies and do not detract significantly from her work duties. She has not violated the GCA, because she is selling to people who initiated the sale and over whom she has no supervisory authority.

Example 10:

During a coffee break at work, a county department head asks his staff to discuss what their family members do. When his turn comes up, the department head makes known that his brother runs a car repair business and that he would be happy to schedule repair work for anyone on the staff, promising them a good deal. This statement violates the GCA because the supervisor initiated it and it solicits sales from employees he supervises for a family-run business. It does not matter whether the department head personally profits from the business, because his family member does.

Example 11:

A county employee knows that his supervisor's brother is the sole owner of a car repair shop, but the supervisor has never mentioned this to his staff. The employee brings his car into this shop for repairs. As he picks it up and pays, the employee says to the shop owner: "Be sure to tell your brother I brought my car to you—he's my boss, you know." Although the employee/customer may be trying to curry favor with his boss, there is no violation of the GCA. The supervisor did not promote his brother's services to his staff, has no financial interest in his brother's business, and the employee initiated the transaction. Even if there had been a problem, the supervisor appears to have a "good faith" defense, in that he did not know his brother was selling his services to the supervisor's employee.

Example 12:

A state agency chief legal counsel signs up as an agent for a prepaid legal services company. The company pays for the services of an attorney to anyone who pays a monthly subscription. The legal counsel has no own-

ership interest in the company, but receives a commission from each sale, which he arranges during breaks, lunch and after work hours. He sends out an email to the entire agency to let everyone in the agency know that they can buy this service from him.

He has violated the GCA by offering services to staff he works with and, in some instances, may directly supervise. Even though the business does not belong to him or a family member, he cannot make a commission from sales to employees he supervises. As for agency personnel he does not supervise, he is carefully avoiding conducting his sales during work hours. Nevertheless his use of agency "powers and resources" to make his business known for his personal benefit, including his implicit endorsement as the agency lawyer for this legal services business and the use of office email to promote it, would seem to violate the ethical principles in the GCA against self-dealing.⁴

2. Selling to regulated entitiesThe Law - Section 10-16-13.2

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom

⁴ Section 10-16-3(A) (see above, Part III.A).

the public officer or employee has regulatory authority.

Commentary

The law restricting public officials or employees from selling to individuals or entities over whom they have regulatory authority is similar to the provision against sales to supervised employees. As with the restrictions on sales to supervised employees, the agency employee may not sell or profit directly, through the employee's family or through a business in which the employee has a substantial interest and the employee may not receive a commission or profit from a sale to a person over whom the employee has regulatory authority.

The restrictions on sales to regulated entities differ from those on sales to supervised employees in two respects. First, the restriction against selling to regulated persons and entities applies to any employee with regulatory authority over the person or entity, not just to employees who are supervisors or otherwise part of the agency's management. Second, the restriction on sales to regulated persons does not expressly provide a good faith defense when a government officer or employee is not aware that an individual or entity to whom a sale is made is under the employee's regulatory authority.

Example 13:

A staff accountant for a utility company that is regulated by the Public Regulation Commission is attending a social reception. He tells a Public Regulation Commission hearing officer that his wife has just filed for divorce. The hearing officer suggests that he retain her husband, who is a family law specialist. The suggestion violates the GCA, because the accountant is an employee of an entity regulated by the Commission and the

hearing officer likely would be viewed as having regulatory authority over the utility company. It is against the law for the hearing officer to sell legal services to the regulated entity employee indirectly through a family member.⁵

Example 14:

The wife of a Superintendent of Insurance runs an office supply business. During a meeting, the Superintendent hands his wife's business card to the president of a regulated company, but says nothing about it. The company president has his purchasing agent order, but in the agent's own name, a two-year supply of paper, pens, and printer ink cartridges from the business. The agent pays with a company check. The sale violates the GCA because the Superintendent is selling office supplies through his wife's business. His wife may not have known the name of the company purchasing agent who placed the order, but the Superintendent's action in handing her business card to the president promoted the sale. The payment by company check left no doubt who the buyer was.

3. Contracting with public employees

The Law – Section 10-16-7

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed

⁵See also Section 8-8-19 of the Public Regulation Commission Act for ethical considerations specific to Commission candidates, Commissioners and staff.

through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

Commentary

Apart from contracts of employment, the GCA puts restrictions on state employees wishing to contract with any state agency and on local government employees attempting to contract with the local government agency that employs them.⁶ The re-

strictions apply to the employee, the family of the employee (spouse, parents, children or siblings); or to any business in which the employee or the employee's family has a substantial (over 20%) interest.

The restrictions are not absolute. It is possible for public employees to contract with the government that employs them, provided they meet two conditions.

First, the employee must *publicly* disclose the substantial interest he or she holds. The GCA does not define how that disclosure must be accomplished. It appears that the purpose of the notice is to alert the public to the potential conflict of interest inherent in a public body contracting with its own employee or their family, to ensure transparency and accountability. If the transaction is appropriately publicized, for example, people who might have offered to provide the same service would be able to ensure that proper procedures are followed; and other members of the public would be assured that no "backroom deals" were made to favor insiders, perhaps at an unfair cost to taxpayers.

Even though the GCA does not specify the form of public notice that should be provided, it should be adequate to serve the purposes of providing transparency and accountability. That would mean that, at a minimum, anyone who is reasonably attentive to developments concerning the applicable government agency would be alerted to the situation. Presumably, adequate notice could include anything from posting a notice conspicuously at city hall, to buying a newspaper announcement, to arranging to have it

⁶ For purposes of the GCA, a "contract" is "an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency" for

a wide variety of purposes. See NMSA 1978, § 10-16-2(C).

appear prominently in the agency newsletter or website.

Some guidance regarding the appropriate form of notice might be found in the Open Meetings Act,⁷ which requires public bodies to give advance notice of their meetings to the public. Lacking statutory direction, it would be advisable for a state agency that is contemplating a contract with a state employee, or local government agency that is contemplating a contract with one of its own employees, or a family member or the employee's or family member's business, to use the same form of notice it uses to publicize meetings. For example, a local government body might note in its published meeting agenda that it will consider approving a contract with one of its employees.

Second, state government agencies intending to contract with a state employee and local government agencies intending to contract with one of their employees, their family members or businesses, must award the contract through a competitive process. Usually, this requirement will be met by following the competitive sealed bid process or the competitive sealed proposal process delineated in the Procurement Code.⁸ Some

local government entities may be excluded from the Procurement Code, such as municipalities that have adopted home rule charters and have enacted their own purchasing ordinances.⁹

The employee negotiating or executing the contract on behalf of the government agency is responsible for using due diligence to ensure that the rules described above are followed. Specifically, a state agency should ask potential contractors whether they are state officers or employees and a local government agency should ask potential contractors whether they are officers or employees of that agency. If so, the required public notice must be made and the contract awarded through a competitive process.

Example 15:

A municipal full-time fire chief owns several dump trucks for private trash hauling from construction sites. The city has no trucks of its own, and its previous contract hauling service has just gone out of business. At a city council meeting, the city manager announces that his office will put out a request for proposals to contract with a new hauling service for its solid waste. The fire chief stands up and, on the record, states that he would like to submit a proposal to be awarded the contract in accordance with the rules of the Procurement Code's Request for Proposals (RFP) competitive sealed proposal process. He responds to the RFP properly and does not discuss his proposal with anyone in municipal government. When the city clerk gives the agenda to the local newspaper for the meeting at which the proposals will be considered, she includes a special note that the city fire chief has submitted a proposal. The fire chief's proposal is lawful, since he has made public disclo-

⁷ NMSA 1978, § 10-15-1(D), (F).

⁸ NMSA 1978, §§ 13-1-28 to -199. The Procurement Code's provisions governing procurement by competitive sealed bids and competitive sealed proposals are found at NMSA 1978, Sections 13-1-102 to -122. The Code provides exceptions from the requirement for competitive sealed bids and proposals for small contracts and sole source procurements. See Sections 13-1-125, 13-1-126. However, procurements achieved by those methods would not meet the GCA's requirement for a contract awarded through a competitive process.

⁹ NMSA 1978, § 13-1-98(K).

sure of his interest and followed the competitive process.

Example 16:

Same situation as in the above example, except that the trash hauling business is owned by the fire chief's uncle. Since the definition of family is limited to spouse, parents, children or siblings, the restrictions of the GCA do not apply—no disclosure is required and non-competitive methods can be used, provided they are otherwise consistent with applicable law.

Example 17:

A state agency that hears administrative appeals of its actions issues a Request for Proposals (RFP) under the competitive sealed proposal process of the Procurement Code for contract hearing officers who are licensed New Mexico attorneys. The RFP also invites current state employees with hearing officer experience to respond to the RFP as long as they disclose their current state agency employment status. Sam Smith, an attorney who is employed by another state agency and works a four-day flex schedule, submits a proposal to serve as a hearing officer. He discloses that he is a full-time state agency employee but will perform his hearing officer duties on his day off from the state agency that employs him. The agency publishes a notice in the local newspaper listing the proposals it has received and indicating those submitted by state employees. The agency awards Smith a contract to be a hearing officer based on its evaluation of the weighted evaluation factors in the RFP. Smith has given sufficient public notice that he is a state employee.

4. Preserving confidentiality

The Law - Section 10-16-6

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

Commentary

This provision protects confidential information from being disclosed for personal use by an employee who has access to it through an official position, to benefit either the employee or anyone else privately. While most government information is considered public, there are many records that are by law withheld from public viewing. Such confidential records include, for example, individual and business tax returns, many materials developed for litigation, school records, and medical records. This provision of the law is one of the provisions in the GCA that extend to legislators as well as other public officials and employees.¹⁰

Example 18:

An emergency medical technician employed by the county fire department drives a seriously injured accident victim to the county hospital, and ascertains the victim's condition from the medical staff. She then calls an attorney friend, details the victim's condition, and provides the victim's phone number

¹⁰ See also the Inspection of Public Records Act, NMSA 1978, ch. 14, art. 2 (requiring public bodies to make public records available for inspection and copying, with certain limited exceptions).

*so the attorney can offer to represent him. This conduct violates the GCA, because the EMT, a county employee, has used confidential medical information obtained from the county hospital staff for the private benefit of the attorney.*¹¹

Example 19:

A clerk for a board that regulates nursing home administrators is filing correspondence when he notes a highly critical letter, marked "confidential," from the family of a resident regarding a nursing home administrator whose license is up for renewal. The clerk knows the administrator of the nursing home, can't believe the criticism, and feels she should know about this as it may negatively affect the business of the nursing home. The board's practice act protects the confidentiality of complaints until the board takes action on them. Because the letter is a confidential complaint, sending the letter to the nursing home administrator, or even notifying her about it, would violate the GCA.

C. Outside Employment

1. Basic principles

The Law - Section 10-16-3

A. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

The Law - Section 10-16-4.2

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employ-

ment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

Commentary

Like many other Americans today, many public employees have difficulty making ends meet. When the opportunity arises, even some full-time employees for government take second jobs in the private sector to help support themselves and their families. The only problem with this under the GCA occurs when the second (or subsequent) job interferes with performance on the employee's government job. This might happen under several circumstances:

a. When the employee cannot fully attend to her public duties because of the outside employment

Public employees who work at second jobs unrelated to their official duties are required by the GCA only to disclose to their agencies that they have taken the outside work. This allows supervisors to evaluate the situation for any potential problems. Policies of the agency, whether at the state or local government level, may create additional requirements. Such policies often direct that public employees not take any outside work that interferes with the performance of official duties. If such interference occurs, say because the employee leaves work early due to the hours she has to be at her other job, appropriate corrective or disciplinary action may be taken.¹²

¹¹ It also would likely violate the Emergency Medical Services Act. See § 24-10B-4.1.

¹² The State Personnel Board has promulgated rules governing disciplinary action against state classified employees. See Rule 1.7.11.10 NMAC.

b. When the employee uses public resources to conduct outside work

Employees sometimes try to use their time at their agency or the agency's supplies or equipment for outside work. Examples may include using an agency telephone for private business during work hours, or using computers, copiers, telephones, fax machines, vehicles or other equipment in support of the private business. Some offices will track such personal use of equipment and supplies and obtain reimbursement from the employees, and time used for non-official work can be self-reported; but except in extreme cases an honor system must ultimately be relied on. Emergencies will of course arise requiring some flexibility, but that should usually be the rare exception. In any case, the GCA prohibits use of public resources for private interests, so managers have a duty to rein in any significant use of public time or resources.

c. When the employee's private work conflicts with the public interest

The strongest statements by the GCA on this subject relate to employees whose outside financial interests conflict directly or indirectly with the interests of the public they have committed to serve. As discussed in earlier in this Part, public officials and employees must avoid such conflicts of interest.

Example 20:

A staff member in the county purchasing office is tasked with reviewing the telephone service used in the county jail, to see if costs can be reduced. The official, on her own time and without anyone in her office knowing, is a paid marketing consultant to a private telephone service company that supplies software for blocking and limiting in-

mates' calls and automatically reversing the charges. She approaches her company, which offers the county better service at lower rates than the competition. Even though she may have been able to get a great deal, the purchasing official must immediately disclose this conflict and disqualify herself from any role in the review because it benefits a company that pays her.

Example 21:

Laura is a single mom whose full-time salary at her city job isn't enough to pay her bills and raise her kids. She responds to an Internet ad to become a telephone marketer from home. At first, she only places calls after the kids are in bed or on weekends, but she leaves people her personal cell phone number to call her back. Calls start coming relatively often during her work hours. These calls are too short to keep track of, but they start interrupting her performance of her official duties several times a day. Laura's business has begun to cross the line of ethical conduct. Even though the return calls are coming on her personal cell phone, she is using an office resource—her time—for her private business. She will need to disclose the business to her supervisor, and to make adjustments, possibly giving her callers her home number or cell number used only on her own time, and asking them to leave a message she can return.

2. Prohibited employment

The Law - Section 10-16-4.3

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting

with the governmental body by whom the employee is employed.

The Law - Section 10-16-13.2

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

Commentary

While public employees may take outside work to supplement their incomes if they disclose it, these two sections of GCA draw a line barring them from taking employment that would create inherent conflicts of interest. No amount of disclosure or remedial action would make such employment allowable.

a. Employees participating in the contracting process

The first category of forbidden employment is between a government contractor and an agency employee who is involved in the agency's contracting process. Section 10-16-4.3's prohibition applies to public employees who "directly or indirectly" participate in the contracting process.

The GCA does not define "directly or indirectly" for purposes of Section 10-16-4.3's prohibition against contemporaneous employment. However, useful guidance is found in the Procurement Code, which defines "direct or indirect participation" in a similar context (see discussion in the next paragraph) as "involvement through deci-

sion, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice." See NMSA 1978, § 13-1-53. Thus, an employee of the agency who formulates the specifications for a contract, decides which individuals, businesses or organizations will receive contracts from the agency, is involved with overseeing the performance of the entity awarded the contract or similarly participates in the contracting process may not serve that entity as an employee so long as it has the contract.

The Procurement Code contains a similar provision, which prohibits state or local government employees who are "participating directly or indirectly in the procurement process" from becoming employees of persons or businesses who contract with the employees' agencies. See NMSA 1978, § 13-1-193. In contrast to the GCA, however, the Procurement Code permits a state agency or local government body to waive the Code's prohibition against contemporaneous employment if certain conditions are met. See NMSA 1978, § 13-1-194. Consequently, a government employee who participates in the procurement process for contracts covered by the Procurement Code will be subject to the specific provisions of the Code governing contemporaneous employment with a contractor, including the Code's waiver provision. For procurements or contracts that are outside the scope of the Procurement Code,¹³ the more absolute prohibi-

¹³ The GCA's coverage is broader than the Procurement Code's. The Code generally applies to the procurement of items of tangible personal property, services and construction." NMSA 1978, § 13-1-30. The GCA applies to the same transactions, plus contracts for the acquisition, sale or lease of any land or building, licenses, loans and the pur-

tion in Section 10-16-4.3 of the GCA will apply.

Example 22:

Jane Doe is a contracts manager in a state agency monitoring whether mental health services contractors with her agency are complying with the terms of their professional services contracts. Annually, she participates in the drafting of the request for proposals and the proposal evaluation process that leads to the award of those contracts pursuant to the Procurement Code. Jane is also a licensed social worker employed by one of her state agency's contractors on weekends as a mental health counselor. Because she is directly involved in the state agency's contracting process, Jane's concurrent position with the contractor raises a question under Section 10-16-4.3 of the GCA. In this case, however, the contracting process in which Jane participates is covered by the Procurement Code, so Jane might be permitted to retain her outside position if she meets the requirements for a waiver under Section 13-1-194.

Example 23:

John Barrister is a county attorney who reviews county contracts for legal sufficiency before recommending them to the county commission. He signs his name on the same signature page where the county manager will also sign to legally bind the county after approval has been granted by a majority of the county commissioners. John signs and approves for legal sufficiency a contract with a local law firm that has also contracted with John to do legal research on public issues outside John's regular hours with the county. By virtue of his review of and signa-

ture on county contracts, John is directly involved in the contracting process. Accordingly, unless all the contracts John is responsible for reviewing and signing are covered by the Procurement Code (which allows for a waiver of its contemporaneous employment prohibition), the best course for John would be to terminate his contract with the law firm consistent with the GCA's prohibition against contemporaneous employment with contractors.

b. Employees with regulatory authority

The second type of outside employment forbidden to all state and local government officers and employees under the GCA is a job or contract with an entity that the *officer or employee* regulates. The employee may not work for the entity, nor provide it with any goods or services under a contract. Interestingly, this section of the GCA does not prohibit all employees of an *agency* that regulates the entity from taking such work: it prohibits only the *employees* who themselves have regulatory authority over the entity from working for or contracting with it. This might mean, for example, that a rate analyst who reviews and reports on rate filings by a public utility but does not have authority to *approve* the rate filings would not violate this section by working for the utility.

Example 24:

A state agency employee, on his own time, writes a successful grant application on behalf of a non-profit organization for federal funds that are awarded through a contract with his state agency. The employee, who tells his supervisor from the outset what he is doing, has no role in selecting the grantees, but is charged with monitoring progress under the grants once awarded to ensure that the work is completed on time. The em-

chase of financial securities or instruments. See NMSA 1978, § 10-16-2(C).

ployee violated the GCA's prohibition against contracting to provide services to an entity that contracts with the employee's agency when the employee participates directly or indirectly in the contracting process. Merely disclosing his role to his supervisor did not remove the unlawful conflict.

Example 25:

A roofing contractor who is a member of the Construction Industries Commission is asked by a New Mexico-licensed general contractor to subcontract for roofing services to build several private residences. Since taking office, the commissioner has not had to vote on the general contractor's license renewal or resolve any disputes, and nothing is pending. The commissioner is willing to disqualify himself should any controversies or other regulatory actions involving this contractor come before the Commission. The GCA nonetheless bars the commissioner from taking the subcontract. His eligibility for per diem and mileage reimbursement as a commissioner subjects him to the GCA, and his status as a commissioner gives him regulatory authority over the contractor. The GCA therefore bars him from accepting the contract to provide construction, or any other paid services, to the regulated contractor.

Example 26:

A private taxi service contracts with the city to provide free safe rides to customers at bars who might otherwise drive drunk. The cab company owner has to appear occasionally at city hall on various contract matters. During these visits, he strikes up a casual friendship with a city policeman assigned to security duty at city hall. When the cab company owner starts to experience vandalism at his garage, he asks the police officer if he can provide security guard ser-

vice at night for his company garage. Since the police officer has no role in the city's contracting process, he may accept the offer as long as it is also allowable under his department's policies regarding outside employment.

3. Honoraria and expense reimbursements

The Law - Section 10-16-4.1

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

Commentary

The GCA forbids state and local government officials from accepting payment or gifts of over \$100 in value for performing services related to their official duties. The statute therefore seems to allow occasional tokens of appreciation to be given to speakers from government, but the value of a gift may not exceed \$100. Reimbursement for reasonable and bona fide expenses incurred for meals, lodging or travel is allowed because that reimbursement presumably is intended to save the government agency the expense of traveling, not the public official personally. (Salaried state officers are barred by the state constitution from accepting any compensation in addition to their salaries, which may absolutely preclude them from accepting honoraria in exchange for services that

relate to the performance of their public duties. See Appendix I, Part B.)

Example 27:

A highway engineer working for the State occasionally moonlights by designing private roads for rural residents. He does all the work at nights and on weekends or personal leave time, works from home and uses only his own supplies and equipment. The private landowners pay him for his services. These fees appear to be allowable under Section 10-16-4.1 of the GCA as "payment or compensation for services rendered in the normal course of a private business pursuit." Even though the engineer is using the same skills he uses at work, the private roads he is building do not appear to relate to his work. However, it is still important (and legally required under Section 10-16-4.2) that he notify his supervisor of this work, so that the agency management can assure themselves that the work does not conflict in some way with their plans for public roads or with the engineer's duties. For example, the engineer should not put his agency in jeopardy of being accused of favoritism if his private clients also come to the agency for publicly funded services.

Example 28:

An appellate judge is asked by people he does not know to officiate at their wedding on a weekend at an out of town resort in New Mexico. The judge indicates that he can do so, but that since this would require work after business hours and travel, he would want to be paid a gratuity of \$100 plus travel expenses. The couple may compensate the judge for his travel expenses, but the judge may not accept the gratuity. The gratuity does not exceed the limit set in the GCA, but judges are also subject to the Code of Judicial Conduct, which prohibits acceptance of

any fee for performing a wedding. See Rule 21-312 NMRA, Comment 3. So, the judge would not be subject to the penalties that result from violations of the GCA, but might be subject to discipline under the Code of Judicial Conduct.

D. Former Public Employees

1. Restrictions on contracts with former public employees

The Law: Section 10-16-8

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

Commentary

Paragraph (1) of Section 10-16-8(A) prohibits state agencies from contracting with or taking action favorably affecting any person or business: 1) that is personally represented in a matter by a person who, within the past year, was an officer or employee of the state; 2) when the value of the contract or action exceeds \$1,000, and 3) when the contract is a direct result of an official act by the public employee or officer.

While the restriction in paragraph (1) on former employees only applies to contracts or actions with a value over \$1,000 and expires after a year, paragraph (2) applies a stricter standard. This subparagraph prohibits a state agency from contracting with any person or business that is “assisted” in the transaction by a former state officer or employee whose official act, while in state employment, directly resulted in the agency’s making that contract or taking that action. Paragraph (2) places no limits on the amount of the contract or the length of time after the employee has left government for the contract to be illegal.

For both these paragraphs, the GCA defines the term “official act” as: “an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.” See NMSA 1978, § 10-16-2(H). See also Part IV.A of this Guide for a discussion of what constitutes an “official act” for purposes of the GCA.

Section 10-16-8(C) applies the same rules that apply to state agencies under Subsection (A) to local government agencies and restricts those agencies from entering into transactions with contractors assisted or represented by former local government employees.

For both Section 10-16-8(A) and (C), deciding whether paragraph (1) or (2) applies to a particular situation may prove challenging. For one thing, the GCA provides no definition of “direct result.” Moreover, in deciding whether to apply subparagraph (1) or (2), the agency would have to distinguish between a contractor that is “represented personally” by a former agency employee versus one that is “assisted in the transaction” by the employee. Because of these difficulties, we urge agencies to be extremely cautious before entering into contracts with companies that are represented or assisted in the contracting process by former employees.

Example 29:

Robert Smith is a cabinet secretary who plans to retire in two months. Before he retires, he asks his Administrative Services Division Director to issue a request for proposals for up to \$100,000 in landscaping services at one of his Department’s residential treatment facilities. Smith knows that his brother-in-law Jones owns a landscaping company and needs the business. Two months after his retirement, Smith helps his brother-in-law respond to the RFP by drafting part of the proposal, which is timely submitted to his former state agency. He also attends a meeting with Jones and state agency procurement officials to help negotiate a “best and final offer.” The state agency awards the contract to Jones. The state agency has violated this section of the GCA. Smith’s official act of ordering the issuance of a request for proposals before retiring

directly results in his brother-in-law's opportunity to respond to the RFP. Then within a year of retiring Smith personally represents his brother-in-law by writing part of the proposal response and joining his brother-in-law in the negotiation of the contract, which exceeds \$1,000. Under these circumstances, the state agency cannot award the contract to Jones.

Example 30:

Judy Jones is a former division director of a large state agency that contracts for community-based substance abuse services. While still working for her state agency, she wrote a request for proposals for her division to award a contract that she knew her husband, a substance abuse counselor, would receive, given the specific weighted evaluation factors favorable to her husband she included in the RFP. The state agency violated the GCA by awarding the contract to Jones' husband because he was assisted in the transaction by his wife, whose official acts while still in office directly resulted in the award of the contract to him. Had Jones' husband in this example participated with Jones in the preparation of the weighted evaluation factors in the RFP, the state agency also would have violated Section 10-16-13 of the GCA, which prohibits state and local government agencies from accepting "a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based."

2. Restrictions on former employees' transactions with government agencies

The Law - Section 10-16-8

B. A former public officer or employee shall not represent a person in the per-

son's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

Commentary

Subsection B creates an absolute restriction on certain former public officers or employees. It prevents them from representing a person in the person's dealings with the government on a matter in which the public officer or employee participated "personally and substantially" while working for either the state agency or local government involved. The amount of the contract or the length of time that the employee has been gone from public service is immaterial. "Personally and substantially" are not defined in the statute, so they should be read as commonly used. "Personally" would therefore mean "in person" and "substantially" would mean more than a passing, peripheral or minor involvement.

Section D creates still another absolute restriction on former officials or employees of state or local government. It establishes a one-year period when a former public officer or employee is prohibited from representing "for pay" a person before the state agency or local government agency at which the former public officer or employee served or worked. This restriction applies no matter how extensive or limited the former employee's involvement may have been in the particular project or contract while the em-

employee worked at the government agency. The employee may even have worked in a division of the same state or local government agency that was unrelated to the contract or interest of the person he is representing; the prohibition still applies for a year after the employee leaves the agency. A common application of the prohibition has been to former agency attorneys attempting to represent private clients in matters before their former agencies.¹⁴

Example 31:

Lawrence Little designed a software program while a state employee to track prisoners in the Department of Corrections system. After he retires, Little is hired as a consultant by a large private corrections company to update and improve the software he designed for the state. Little is asked by the private company to negotiate a contract with the state employee who succeeded him to replace the software program originally created by Little with an updated version owned by the private company. Little and his successor at the state would violate the GCA if Little negotiated a new contract on behalf of the private company because he was personally and substantially involved in the creation of the original software used by the state.

Example 32:

A retired municipal park maintenance supervisor contracts with a private security firm, which asks her to talk with city officials about hiring them to provide services at city hall. Even though the former city employee was not involved with security while employed by the city, the law bars her from

representing the security firm for pay in discussions with her former employer for a year after her retirement date. She can volunteer these services to the security company, however.

Example 33:

Stanley Smith is a wastewater engineer who has left the Environment Department to do private consulting. Three months after entering the private sector, Smith is retained by a private company to testify on its behalf before the Environment Department's appointed hearing officer on proposed new wastewater regulations. Smith can only do so under the GCA if he was not personally and substantially involved in the drafting of the proposed regulations before he left his state position and does not accept compensation for his testimony.

E. Legislative Conflicts of Interest

1. Contracts with legislators

The Law- Section 10-16-9

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

¹⁴ See Ortiz v. Taxation and Revenue Department, 124 N.M. 677, 954 P. 2d 109 (Ct. App. 1998).

Commentary

This section of the GCA establishes rules for our unsalaried citizen legislators when they are conducting their private business activities.¹⁵ It applies when legislators attempt to contract with a state agency directly, through their families or through a business in which they or their families have a substantial interest.

There are three key requirements that must all be met before a state agency may enter into a contract with such an entity. First, the legislator must disclose his or her substantial interest. Second, the contract must be awarded under the Procurement Code, except that a legislator/contractor is not eligible for a sole source or small purchase contract. And third, the agency contracting personnel must exercise due diligence to be sure that no conflict addressed by this provision is overlooked. The due diligence requirement might be met by requiring the contractor to complete a form requiring disclosure of any conflicts of interest, including whether the potential contractor is a legislator, a family member or a business in which the legislator or legislator's family has a substantial interest.

The purpose of Section 10-16-9 is to prevent legislators from using their public office for personal gain and exploiting the unfair advantage they could theoretically have by threatening retaliation through legislative actions, such as voting against a budget item sought by the state agency. Even if a legisla-

tor did nothing wrong to get a contract with a state agency, the public could reasonably be concerned that the legislator had an unfair advantage by reason of his power. Moreover, agency personnel might believe that a legislator who is denied a contract would retaliate, perhaps during their budget hearings, even if the legislator had no intention of doing so.

Example 34:

A state agency awards a small purchase contract to the daughter of a state legislator to write an informational brochure for the agency. The contract is approved by all appropriate authorities, who do not know of the proposed contractor's family relationship to an elected official. There is no question that the proposed contractor is qualified to perform the work required by the contract. The contract award violates the GCA because it prohibits families of legislators from receiving a small purchase contract. In addition, the proposed contractor's relationship to the legislator was not disclosed. The contracting personnel at the agency might have avoided the improper contract award if they had performed the due diligence required by the GCA, including appropriate inquiries to determine whether a conflict existed.

2. Legislators as representatives of parties before state agencies

The Law: Section 10-16-9

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall

¹⁵ Members of the legislature are also subject to sanctions for unethical conduct as recommended to their respective houses by the Interim Legislative Ethics Committee, see NMSA 1978, §§ 2-15-7 to -9, and to removal through impeachment, N.M. Const., Art. IV, § 36.

refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

offense by belatedly paying the fine may be raised as a defense to his actions, but the abuse of his legislative office may still subject him to ethical sanctions by the Senate in addition to civil or criminal penalties under the GCA.

Commentary

Legislators can represent or assist constituents before a state agency for the benefit of those constituents, but must do so without compensation. Legislators who are attorneys and other professionals can receive compensation for their representation of clients or for professional services rendered but cannot refer to their legislative status, except for scheduling purposes, and cannot use legislative stationery for private purposes or engage in threats or implications relating to legislative actions.

Example 35:

A senator who is also an attorney licensed to practice law in New Mexico sues on behalf of a client against a state agency for breach of contract. The state agency's attorney successfully petitions the district court for a contempt order and fine against the senator after he fails to appear for depositions of his clients. Angered by this, the senator refuses to pay the fine and seeks revenge against the state agency attorney. He asks a fellow legislator on the Senate Finance Committee to eliminate the salary of the state agency attorney from the agency's budget. The Senate Finance Committee refuses to act on the attorney's salary and at a contempt of court hearing, the senator pays his fine.

The senator violated the GCA and possibly other laws by attempting to use his legislative office to gain personal advantage in a lawsuit he initiated as a licensed attorney for compensation. His effort to mitigate his

VI. POLITICAL ACTIVITY

This Part addresses the GCA's provisions governing political activity allowed or prohibited for state and local government officials. For additional constraints under other state and federal laws, see Appendix I.C: Political Activity.

The Law – Section 10-16-3.1

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities.

Commentary

People who take jobs in government do not give up all their rights to participate as citizens in our democracy. They can vote, donate to candidates, and work on their own time for candidates and political parties and causes. Those elected to office or appointed by elected officials are entitled, and expected, to use public resources at their disposal to fulfill their public commitments made during their political campaigns, consistently with their other duties of office. That justifies their appointing like-minded

people - who serve with virtually no job security - to key policy positions without going through the usual civil service procedures.

At the same time, election to office does not entitle officials to use publicly funded resources to finance their political campaigns. Nor does election success entitle the officials to hire or remove staff from civil service positions, or to treat employees differently based on their political views. Thus, the challenge is how to respect the civil rights of individuals and the legitimate political expectations of office-holders, while protecting the public against political misuse of their resources.

The GCA (and, for certain officials, the federal Hatch Act) attempts to strike a balance among these competing concerns. While respecting the constitutional rights of public employees and officials to participate in democratic processes, the law attempts to protect the taxpayers against use of public resources and personnel to benefit political parties, candidates or officeholders. The law also protects public employees from unfavorable treatment at their jobs simply for not having supported favored candidates.

A. Coercing Employees to Offer Political Support

The GCA protects *all* New Mexico governmental employees - whether at the state or local government level, and whether or not they are career civil service appointees - against being coerced by their employers to support political candidates, parties or causes. Under this law, public employees are protected not only from coercion to make contributions of money, but anything else of value, including their time. And employees

are protected against being coerced to contribute not only to specific candidates, but also to “a party, committee, organization, agency or person for a political purpose.” So, the prohibition encompasses requiring contributions even to candidates in non-partisan elections or to political action committees, for example.

The GCA further prohibits *threats* to deny an employee a promotion or pay increase because of how the employee decides to vote, even if such threats are not carried out. The protection of this subsection extends both to classified (civil service) and exempt (politically appointed) employees. Implicitly, it also prevents a public officer or employee from terminating another employee because of his or her vote or attempting to affect the employee’s political choices in other ways, including:

- requiring an employee to contribute a percentage of the employee's pay to a political fund;
- influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event; and
- advising an employee to take part in political activity or similar activities.

Example 36:

After a change of administrations, the new state agency head calls in her entire agency staff and “suggests” that they all “seriously consider making contributions” to the new governor’s political party, and that such contributions will be “duly appreciated.” She mentions in the next sentence that she will be reviewing which exempt employees to retain and who throughout the agency will be getting raises or promotions. Her obvious implication tying the political support of the employees with their opportunities to retain their jobs or receive raises or promotions will not be lost on any of her

staff. This coercive conduct violates the GCA.

Example 37:

A supervisor privately asks an employee to contribute to a political action committee. The committee uses the funds it raises to produce and air ads on television in support of specific candidates the committee endorses. The supervisor’s request violates the GCA, even though there is no implied threat or reward attached. Since the political action committee attempts to influence voter behavior during an election, and contributions to the committee can be viewed as participating in the committee’s activities, the supervisor’s request amounts to “advising the employee to take part in political activity or similar activities.”

Example 38:

The lieutenant governor decides to make a run to succeed the term-limited governor he has been serving under. His administrative aide tells his exempt (non-civil service) staff that there will be an organizing meeting on Saturday for those wishing to help on the campaign. John, a legislative aide to the lieutenant governor, decides to attend because he supports his boss and wants to serve as an aide should he become governor. Since John’s decision to attend is entirely voluntary, and his participation in the campaign meeting will occur on a weekend, there is no violation of the GCA.

B. Running for Office

The GCA does not itself authorize public employees to seek or forbid them from seeking election to public office. However, state employees in the classified service are restricted from running for office under the State Personnel Act and the federal Hatch

Act creates a special rule for government employees whose positions are primarily federally funded. See Appendix I.C for further discussion on those laws.

C. Using Public Assets for Political Purposes

The Law - Section 10-16-3.1

A public officer or employee is prohibited from: ...

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

Commentary

The law protects taxpayers from use by public employees of public funds or resources to support political activity and other unauthorized purposes. This applies to all public employees, state or local, exempt or classified. Of course, actions that may look like public service to the supporter of an official may look like politicking to his opponents. For example, if a political officeholder running for re-election uses his official car, driver and security detail to attend a luncheon for a private interest group, where he tells his audience what his administration is doing for them, it may look like campaigning. But if the politician does not ask for or accept donations of money or their votes, the expenditures would be legitimate efforts to inform the public of their government's actions.

Example 39:

A county clerk running for re-election asks her staff to put a stack of her election flyers on the counter where the public can see them and take them if they like, but staff

members are instructed not to say anything about the flyers to anyone. Despite the code of silence, putting the flyers on the counter where the public does official business with the clerk's office is an illegal use of public resources under the GCA.

VII. IMPLEMENTATION OF THE GOVERNMENTAL CONDUCT ACT

A. Codes of Conduct

Commentary

The Law - Section 10-16-11

A. [E]ach elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

The GCA *requires* each official of government who is elected statewide to adopt a general code of conduct, based on the principles in the GCA, governing employees of his or her agency. There are seven such officials under the New Mexico Constitution: the governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, and commissioner of public lands. The New Mexico Legislative Council is directed by the GCA to adopt a code of conduct for legislative employees.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists.

State executive and legislative agencies, and state institutions, are *permitted* to adopt separate codes of conduct specific to their circumstances. Those codes may prescribe ethical standards for employees of the agency additional to those of the GCA.

D. Codes of conduct shall be reviewed at least once every four years.

All codes of conduct should be filed with the Secretary of State and open to public inspection. The GCA requires that the codes be reviewed every four years, which coincides with the terms of office of elected officials in the executive branch.

The Law- Section 10-16-11.1

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

The GCA does not specifically address the adoption of codes of conduct by local government agencies. Nevertheless, local governments may find it advantageous to adopt their own codes, since doing so allows local governing bodies to address their particular ethical issues and experience. It also provides an opportunity for constituents to participate in the process of adapting the ethical code to their locale, which could help promote greater public understanding of the ethical rules binding their elected and appointed officials. In any event, the GCA expressly allows local government agencies, as

well as state agencies, to adopt standards that are more stringent than those required by the GCA.

Example 40:

A cabinet secretary decides to adopt a code of conduct for her employees. Her code includes a provision disciplining anyone who sells anything to an employee that they supervise, even if the employee initiates the sale. The code provision banning all sales to supervised employees is stricter than the GCA provision allowing such sales when initiated by the supervised employee. This stricter agency-specific rule is permitted by the GCA.

B. Education

The Law - Section 10-16-13.1

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

The Law - Section 10-16-11

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training biennially.

Commentary

The GCA places considerable emphasis on educating public officers and employees about the requirements of the law and agency codes of conduct. While penalties for violating these requirements are included in the law, the New Mexico Legislature clearly intended education to be the first resort to prevent problems from arising, rather than disciplinary or legal action after violations have already occurred. Each statewide elected official and agency head is mandated to provide education on the general code of conduct and any applicable separate code of conduct. The Secretary of State is given general responsibility to educate all those subject to the ethical requirements of the law, while all legislators are required to take two hours of ethics training every other year. All public employees are required to receive copies of their agency codes of conduct, either within 30 days of the code's adoption or when new employees are hired.

C. Enforcement

When education fails, tools for enforcing the GCA include: voluntary compliance after notice, disciplinary action, civil actions, criminal penalties, and impeachment.

1. Voluntary compliance

The Law - Section 10-16-13.1

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter.

Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

Commentary

When violations of the GCA come to the attention of the Secretary of State, the Secretary is given the authority to refer the violations to an appropriate prosecutorial agency for civil or criminal enforcement action. But before referring an alleged violation for civil enforcement, the Secretary must first give anyone who has violated the GCA “unintentionally or for good cause” ten days’ notice to correct the violation. Thus, the Act imposes on the Secretary a duty to make at least a preliminary determination as to whether or not a violation was intentional.

Example 41:

An employee privately notifies the Secretary of State that her agency has entered into a sole source contract with a company represented by a former employee of the agency. The employee does not know whether the violation of the GCA, which requires the agency to use a competitive process in such circumstances, was an honest error or was a deliberate attempt to evade the law. The Secretary of State assumes that the violation was an honest error and notifies the agency head, allowing ten days for him to take corrective action, such as voiding the contract, before the Secretary of State refers the issue to the Attorney General.

2. Disciplinary action

The Law - Section 10-16-11

C. The separate codes [of conduct], upon approval of the responsible executive branch public officer for executive branch

public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension.

The Law – Section 10-16-14

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those [removable only by impeachment], is grounds for discipline, including dismissal, demotion or suspension.

The GCA provides for disciplinary action, including dismissal, demotion or suspension, in response to violations of the Governmental Conduct Act by any state or local government employee. The law similarly provides for disciplinary action when a state executive or legislative branch employee

violates the separate code of conduct governing the employee's conduct. See Part VII.A, above.

For classified state employees, the State Personnel Act and implementing regulations govern disciplinary action for violations of the GCA. Complaints against legislative branch employees are handled according to procedures adopted by the Legislative Council and complaints against judicial branch employees are governed by procedures specified in the judicial personnel rules. See Section 10-16-14(D). Local governments will look to their respective rules and ordinances for the appropriate procedures when their officers and employees are alleged to have violated the GCA.

To make clear that no official is above the law, the legislature provided that violations of the GCA are grounds for removal by impeachment. The N.M. Constitution provides that elected executive branch officials, district judges and legislators may be removed from office by impeachment proceedings, which is the responsibility of the House of Representatives.¹⁶ The GCA authorizes the Attorney General to refer the evidence of a GCA violation by an impeachable official to the House. The House has thirty days to either dismiss the allegations or institute hearings. After thirty days, the Attorney General is required to take the allegations against the official to the public, but must point out that the allegations were not proven.

3. Civil actions

The Law - Section 10-16-18

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Gov-

ernmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

Commentary

When the Secretary of State refers a matter for prosecution - after trying to obtain voluntary compliance when appropriate - the Attorney General or district attorney has the option of filing a civil or criminal action, or possibly even both. The prosecutor may decide that there is not sufficient evidence to hold the state or local government official criminally responsible, because, for example, the prosecutor cannot prove that the act was done with criminal intent. In that case, the prosecutor may still be able to ask a court for an injunction, to prevent further misconduct from happening. If misconduct has already happened, the prosecutor can ask the court to impose civil penalties up to the limits authorized in the GCA.

Although the GCA allows the Secretary of State to refer cases to the Attorney General or appropriate district attorney, those agencies have independent authority to prosecute violations of the GCA, regardless of how the violations come to their attention.

¹⁶ See N.M. Const., Art. IV, § 36.

Example 42:

A secretary for a licensing commission that oversees chiropractors calls the Attorney General's Office (AGO) to report that the commission's director is secretly selling office furniture to the chiropractors they regulate. The AGO investigates and finds that the director's husband owns the furniture business and the director, who is living separately from, but still married to, her spouse, was not aware that chiropractors were buying from the family store. The director is unable to get her estranged husband to stop selling the furniture, and tells the AGO there is nothing else she can do. The AGO might ask a court for an injunction requiring her to either stop the furniture sales or step down as director, at least until she takes legal action (such as a separation agreement) that removes her interest in the furniture sales. The AGO might also request a civil penalty of between \$250 and \$5000, as permitted by the GCA.

4. Criminal proceedingsThe Law- Section 10-16-17

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

Commentary

The GCA contains two provisions the violation of which constitutes a fourth degree fel-

ony. Those provisions, as discussed previously in this Guide, prohibit a government employee from (1) requesting or receiving money or other thing of value in exchange for the promised performance of an official act, Section 10-16-3(D) [see discussion in Part IV.A], and (2) taking an official act for the primary purpose of enhancing the employee's financial interest, Section 10-16-4(A) [see discussion in Part V.A].

Otherwise, public officers and employees who deliberately violate the requirements of the GCA and who are prosecuted by the attorney general or a district attorney may be convicted of misdemeanors. While the public employee may try to argue in her defense that the violation was unintentional, the employee is responsible to know the law. A judge may a sentence a person convicted of a misdemeanor violation under the GCA to up to a year in jail, a fine of up to \$1,000, or both. These penalties apply not only to the officials themselves, but also to private citizens who violate the GCA.

Prosecutors may also charge the violators under other anti-corruption statutes, such as bribery laws. These can result in much stronger sentences. See Appendix II for a partial list of state and federal laws, many of which include the potential for long prison terms.

APPENDIX I

OTHER LAWS THAT REGULATE GOVERNMENTAL CONDUCT

A. ADDENDUM TO PART IV: THE GIFT ACT

1. Limitations under the Gift Act on Gifts to State Officers, Employees and Candidates

The Law - Section 10-16B-3

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

Commentary

The Gift Act, NMSA 1978, §§ 10-16B-1 to -4, sets limits on what state officials and employees, candidates and their families, whether paid or not, may accept as gifts. The purpose is to avoid any appearance that state officials or employees are performing their official duties or using their authority for purposes unrelated to the interests of the public they represent.

The Gift Act defines "state officer or employee" as "any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of a salary or is eligible for per diem or mileage." Section 10-16B-2(E). Under this definition, unpaid members of state boards and commissions who are *eligible for* per diem and mileage reimbursement—even if they never ask for any reimbursement—are subject to the limits on gifts they may accept under this law.¹⁷

In addition to identifying those who are covered, the Gift Act defines what does and does not constitute a gift, and identifies people from whom a gift may not be accepted if it exceeds certain limits. The Act generally defines a "gift" as something of value that one person donates or transfers to another person, without getting something of equivalent value in return. The statute contains a number of exceptions to this definition. Payments to state officials that are not considered "gifts" for purposes of the Gift Act include things of value given by close friends or family, legal campaign donations, loans at genuine interest rates, reasonable compensation for services rendered, legitimate returns on investments, and reimbursement of certain out of pocket expenses. See Section 10-16B-2(B).

¹⁷ Unlike the GCA, the Gift Act does not cover officials or employees of municipal and county governments, school districts, and other political subdivisions.

The Gift Act does not impose an absolute limit or prohibition on gifts to state officials. The law applies only to gifts from “restricted donors.” A “restricted donor” under the Gift Act is essentially someone who stands to, or hopes to, benefit, either personally or for a client, from an official act that is the responsibility of the recipient. Restricted donors include potential contractors, people who have matters pending before a regulatory agency and lobbyists. See Section 10-16B-2(D). A public official under the Act cannot accept from a restricted donor a gift whose market value is greater than \$250. The restricted donor may not make such a gift either to the officer or employee, a candidate for state office, or a member of that person’s family.

While it is not illegal to offer several gifts of less than \$250 to a person, certain restricted donors face an annual limit on gifts as well. Any registered lobbyist,¹⁸ the lobbyist’s employer, or a government contractor is limited to gifts of an aggregate market value of less than \$1,000 per year to any single state official.

Example 1:

An environmental organization’s lobbyist invites members of the Environmental Improvement Board to attend and sit on a panel at a 5-day conference in Colorado on water quality laws. The lobbyist offers that the organization will pay for each member’s registration and travel expenses as well as a \$500 honorarium for their time away from their home and jobs. As long as the educational program is bona fide, the reimbursement of the officials’ out of pocket travel and

registration expense is allowed—even if it exceeds the \$1000 annual limit on gifts from restricted donors—because such reimbursements are an exception to the definition of “gifts” in the Gift Act. The \$500 honorarium might be permissible under the Gift Act as reasonable compensation for services rendered, but would be barred under the GCA’s limitations on honoraria.¹⁹

Example 2:

A petroleum producer offers to treat a new cabinet secretary, whose office regulates his industry, to lunch for a one-on-one talk about the general state of his industry at an expensive restaurant. The cabinet secretary does not wish to offend the constituent and wants to learn the producer’s perspectives on his industry, but does not wish to pay for the high-priced lunch himself. The secretary decides to see how it plays out, and when the bill arrives, notes that it totals about \$300. The lunch is a gift within the meaning of the Gift Act, and the petroleum producer is likely a restricted donor under the Act. The producer will be a restricted donor if he has a pending case before the secretary’s agency or has hired a registered lobbyist to represent his interests. Since the value of the secretary’s meal apparently came in below \$250, the gift may be legal. Nevertheless, the secretary should think hard about the appearance that this expensive lunch would give to members of the public, the legislature or the media for his administration.

¹⁸ Lobbyists are required by the Lobbyist Regulation Act to register and file expenditure reports with the secretary of state. See NMSA 1978, §§ 2-11-3, 2-11-6.

¹⁹ NMSA 1978, Section 10-16-4.1 (limiting to \$100 honoraria paid for speeches or services rendered that relate to the performance of public duties). See also Part V.C.3, above.

Example 3:

The same cabinet secretary is invited to be a guest speaker at a petroleum producers' association at their annual banquet. His expense to travel there comes out of his agency travel budget, but he does not offer to reimburse the association for his lunch. If, as is likely, the value of the lunch is less than \$100, there is no problem under either the Gift Act or the GCA with the cabinet secretary accepting the free lunch.

Example 4:

After the director of the Bureau of Elections oversees a flawless election, a grateful non-partisan national voter's rights organization based in Washington D.C. declares her their Election Official of the Year and sends her a jeweled gold victory cup worth \$400. The gold cup is a gift whose value exceeds \$250. But since the donor organization has no interest that may be affected by the official actions of the director, it is not a "restricted donor" under the Gift Act. The gift may therefore be accepted.

2. Soliciting Gifts to Charities**The Law: Sections 10-16B-3(C)**

A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

Commentary

In addition to limiting gifts that may be perceived by the public (whether correctly or not) as bribes to public officials, the Gift Act bars state government officers and employees from requesting that businesses their agencies regulate make donations to charitable organizations. A state officer or employee also is generally prohibited from soliciting donations for a charity in a way that would suggest that the donor's purpose is to influence how the officer or employee performs an official duty.

Example 1:

An attorney for a company walks into the hearing room of the commission that regulates the company to present the company's argument for its proposed rates. Conspicuously posted in the hearing room is a banner proclaiming: "The employees of this agency give 100% support to Feed and Clothe our Children, Inc." While the decision is still pending a few days later, the regulated company sends a \$1000 donation to that charity. The agency's decision to post the banner in its hearing room, where regulated companies asking for rate relief will inevitably see it, creates an appearance that a company donating to that charity may receive favorable treatment from the regulators. Accordingly, it may violate the Gift Act as a solicitation.

Example 2:

A town mayor meets with a Health Department official over increasing funding in the Department's existing contract for a not-for-profit clinic operating in his community. The official notes that the agency is leaning towards the requested contract funding increase, and suggests that the mayor might help close the deal if he and other prominent

citizens put together a donation of private funds to support the purchase of some medical equipment for the clinic. Although the Health Department official may be trying to support a good cause, the suggestion that a private charitable donation could influence the official's decision to fund the clinic violates the Gift Act.

B. ADDENDUM TO PART V: STATE CONSTITUTIONAL LIMITS

1. Honoraria

The Law - Article XX, Section 9 of the New Mexico Constitution

No officer of the state who receives a salary, shall accept or receive to his own use any compensation, fees, allowance or emoluments for or on account of his office, in any form whatever, except the salary provided by law.

Commentary

The New Mexico Constitution limits the payment state officers may accept for performing their public duties to their salary only. While the GCA permits acceptance of honoraria up to \$100 in value, the constitutional prohibition seems to bar payment in any amount. State officers should seek legal advice on how to handle any given circumstance, but would be well advised to follow the stricter constitutional prohibition and refuse honoraria in any amount.

2. Conflicts in Quasi-Judicial Proceedings

The governing bodies of state agencies, local governments and local government agencies frequently have dual roles. When it formulates policy and engages in rulemaking, a governing body acts in a legislative capacity. A governing body acts in an adjudicative or quasi-judicial capacity when it determines facts and applies law and legal standards it administers to decide the rights and obligations of individual parties.

When a governing body acts in a quasi-judicial capacity, the governing body's members are required to be impartial. New Mexico courts consistently have held that a member of a governing body who has a bias for or against a party in an adjudicatory proceeding that prevents the member from making an objective or impartial decision is disqualified from participating in the proceeding.

The courts have strictly applied the right to an impartial tribunal in quasi-judicial proceedings. Most recently, the Court of Appeals addressed a board of county commissioners' 3-2 decision to approve an application for a zoning change, where one of the commissioners who voted in favor of the change was a first cousin of the applicant. See Los Chavez Community Ass'n v. Valencia County, 2012-NMCA-44, 277 P.3d 475. The Court of Appeals not only evaluated the commissioner's participation in the matter under the state constitution's guarantee of due process, but also applied Article VI, Section 18 of the constitution, which absolutely prohibits a judge from hearing a case in which a party is "related to [the judge] by affinity or consanguinity, within the degree of first cousin," unless all the parties consent. The court held that this constitutional "presumption of bias" automatically disqualified the commissioner from participating in the zoning matter involving her first cousin and reversed the board's decision.

The Court of Appeals' rationale extends beyond the local zoning proceeding it considered. Consequently, we believe that the kinship-based disqualification requirements of Article VI, Section 18 apply to the members

of any state or local public body when it acts in a quasi-judicial or administrative adjudicatory capacity. Absent the consent of all parties, a member of a quasi-judicial body must be disqualified from participating in a matter if the member is related to one of the parties by marriage or blood, within the degree of first cousin. Of course, due process principles generally require members of a quasi-judicial body to consider any interest or bias that would prevent them from acting impartially in a particular matter and to recuse themselves if necessary.

C. ADDENDUM TO PART VI: POLITICAL ACTIVITY

1. The State Personnel Act

a. Protection of classified state employees from coerced political activity

The Law - Section 10-9-21

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations.

E. No person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color.

Commentary

In addition to the GCA's protections for all employees of state or local government, classified state employees are protected by the Personnel Act from being pressured into political activity. Classified state employees

are those whose jobs and status are protected against the whims of political change. In contrast, non-classified (exempt) employees and officials, whose positions are not covered by the Personnel Act, may be hired and removed at the discretion of elected officials (except when the personnel action is motivated by unlawful discrimination or violation of constitutional rights).

The Personnel Act starts with a basic rule that prohibits a state employer from *dismissing* a classified employee for failing or refusing to make a contribution to a political candidate or organization. As with the GCA, this includes partisan or non-partisan candidates; and political organizations include not only political parties, but also other organizations with a political purpose, like political action committees.

The Personnel Act also prohibits denying appointments to state positions or promotions because of political opinions or affiliation. State Personnel Board Rules reinforce these protections. See Personnel Board Rule 1.7.6.10 and 1.7.6.11 NMAC.

b. Running for office

The Law - Section 10-9-21

B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during his employment. For the purposes of the Personnel Act, being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization.

C. Any employee who becomes a candidate for public office shall, upon filing or accepting the nomination and during the campaign, take a leave of absence.

Commentary

The Personnel Act forbids classified state employees from holding partisan office. Although they cannot hold partisan office, state employees may run for partisan political office if they are authorized an unpaid leave of absence once they have either filed for or accepted the nomination. See also Personnel Board Rule 1.7.6.11 NMAC. State employees are not prohibited from running for or holding non-partisan elected offices, such as municipal government or school board positions. But they are prohibited from serving as officers in political organizations, such as being elected to their state party's central committee or as county chair of a party.

Example 1:

An employee of the State Corrections Department runs for election to the board of the local community college. Since state employees are not barred from seeking election to boards of post-secondary institutions, this is allowable. If elected, however, the employee should be mindful of potential conflicts of interest that might arise while serving on the school board.

Example 2:

The deputy secretary of a state agency, who is exempt from the State Personnel Act, runs in a partisan election for probate judge in her hometown. Because this court only holds session to act on occasional uncontested probate cases one afternoon a week, and the state official is allowed to work on a flextime schedule, she does not serve as judge during her working hours for the state agency. The

arrangement is allowable because of this scheduling that separates her work for state government from her work as a judge. Nevertheless, the employee should consult her supervisor to make sure she is not creating any other conflict of interest for the agency. A classified employee would be barred from seeking this office because it is partisan.

c. Using public assets for political purposes

The Law - Section 10-9-21

F. No employee or probationer shall engage in partisan political activity while on duty.

Commentary

This provision of the Personnel Act explicitly prohibits on-the-job partisan political activity by classified state employees.

Example 1:

The county party chair asks a state classified employee who volunteers for the party to make phone calls to get people to the polls. The employee uses her personal cell phone to make calls during her off-work hours, but leaves a lot of voice mail messages. Voters start calling her back on her cell phone throughout the workday. This partisan activity during state government working hours violates the State Personnel Act.

2. The Procurement Code

The Law - Section 13-1-191.1

B. A prospective contractor subject to this section shall disclose all campaign contributions given by a prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or local pub-

lic body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two year period.

Commentary

This section of the Procurement Code, which applies to expenditures by state agencies and local public bodies for the procurement of goods and services, seeks to create transparency in the public contracting process. It requires prospective contractors in a procurement involving competitive sealed proposals, a sole source contract or a small purchase contract to publicly disclose campaign contributions they or their family members made to an “applicable public official.” An “applicable public official” is an elected official who has authority to: (1) award or influence the award of the contract for which the potential contractor is submitting a proposal or (2) negotiate a sole source or small purchase contract. See Section 13-1-191.1(G)(1). The disclosure requirement applies to campaign contribution(s) to the official cumulatively exceeding \$250 over a two-year period.

A disclosure form must be submitted to the applicable state agency or local public body with a proposal as part of the response to the request for proposals. The procuring state agency or local public body is required to indicate on the form the name or names of every applicable public official for which disclosure is required. See Section 13-1-191.1(C).

In addition to the requirement for disclosing campaign contributions, potential contractors and their family members are prohibited from giving campaign contributions to an applicable public official while the procurement process or negotiations for a sole source or small purchase contract are pending. See Section 13-1-191.1(E).

Example 1:

A successful candidate for statewide office announces that he will accept campaign contributions to retire his campaign debt after he assumes office. Six months after the candidate is elected, the office issues a request for proposals. A former campaign donor contributed \$500 to the candidate on election eve, but does not respond to the officeholder’s new appeal for donations. He submits a timely proposal in response to the RFP. Since the campaign contribution was made within the two years prior to the date the proposal was submitted and the campaign contribution exceeded \$250, the disclosure requirement of the Procurement Code applies. The prospective contractor must disclose his contribution. As head of the office, the newly elected officer is an “applicable public official” because he has authority to influence the award of the contract, even if he never in fact uses that authority.

3. The Hatch Act, 5 U.S.C. Sections 1501 to 1508

The federal Hatch Act restricts political activity by certain federally funded officials and employees of state and local government. Specifically, the Hatch Act applies, with certain exceptions, to government employees “whose principal employment is in connection with an activity which is financed in whole or in part” by federal loans or grants. These federal rules prevent cov-

ered employees from “interfering with or affecting” the result of an election by using their official authority or influence; soliciting political contributions from public employees; or running for office.

a. Political interference

The Law - 5 U.S.C. Section 1502(a)

A State or local officer or employee may not...

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

Commentary

State and local government officials and employees “whose principal employment is in connection with an activity which is financed in whole or in part” with federal loans or grants are required to comply both with state law and with the federal Hatch Act. See Section 1501(4). Public employees covered by this Act are prohibited from “interfering with or affecting” the result of an election by using their official authority or influence. This applies to any election, partisan or not. Officials should not be misled into thinking that only crimes such as vote tampering are prohibited. Any attempt by a covered state or local government officer or employee to affect the result of an election is illegal.

Example 1:

A state environmental official is working late on a federally funded Superfund project that is being used to support half his salary. His paycheck comes from the state agency that employs him, however. A friend and big supporter of his agency, who is running for city council, rushes in. He is on his way to a

candidate forum but has almost run out of campaign flyers to distribute. He asks to use the office copier machine to run off more flyers, which the official permits. This conduct—using office paper and copier services to aid his friend’s campaign -- may violate the federal Hatch Act. It also violates the GCA’s prohibition against using property belonging to the state agency for other than authorized purposes. See Part VI.C, above.

Example 2:

The director of the department overseeing building code enforcement for a city is told by the mayor’s secretary to ask the local building industry for campaign contributions. The city has a sizable grant from the U.S. Department of Housing and Urban Development to strengthen its code enforcement capacities, but the official’s own salary is paid entirely from City funds. Nevertheless, if the director’s principal employment is in connection with the federally financed code enforcement program, the director’s solicitation of campaign donations would likely violate the Hatch Act.

Example 3:

An officer in the food inspection section within the same department described in the previous example leaves flyers supporting the mayor’s reelection at each restaurant he inspects. Unlike the department’s code enforcement section, the food inspection section receives no federal funding. The officer’s actions during business hours are questionable, but they do not violate the federal Hatch Act. The employee is not covered by the Act because he exercises no functions in connection with the federally funded project, even though he works for a department that receives federal funds.

b. Political contributions**The Law – 5 U.S.C. Section 1502(a)**

A State or local officer or employee may not...

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

Commentary

This section of the federal Hatch Act prohibits essentially the same conduct, coercing public employees to support political causes, as the GCA [see Part VI, above]. The more severe federal penalties of the Hatch Act could be imposed against employees who work on federally funded programs and are covered by the Hatch Act.

federal Hatch Act does not prevent officials already holding elective office from running for any elected office, regardless of any federal funding to support their salaries or programs. See Section 1502(c).

c. Running for office**The Law – 5 U.S.C. Section 1502(a)**

A State or local officer or employee may not...

(3) be a candidate for elective office.

Commentary

This section of the federal law prohibits covered state and local government employees from running for partisan political office. It does not bar state or local government employees from running for non-partisan offices. See Section 1503. Also, the

APPENDIX II

STATE AND FEDERAL LAWS RELATED TO ETHICS

The following is a partial listing of laws that govern the conduct and ethical responsibilities of government officials and employees in New Mexico.

New Mexico Laws

Open Meetings Act: §§ 10-15-1 to -4

Requires public bodies to conduct open meetings, noticed in advance to the public.

Inspection of Public Records Act: §§ 14-2-1 to -12

Requires public bodies to make public records available to the public for inspection and copying.

Governmental Conduct Act: §§ 10-16-1 to -18

Provides restraints and obligations on public officers and employees concerning:

- Private benefits, § 10-16-3(A)(4)
- Bribes/consideration/honest services, § 10-16-3(D)
- Conflicting financial interests, §§ 10-16-3(C), 10-16-4
- Disclosures, §§ 10-16-3(C), 10-16-4.2, 10-16-7(A), (B)
- Honoraria, § 10-16-4.1
- Confidential information, § 10-16-6
- Contracts with current or former public employees/families, §§ 10-16-7, 10-16-8
- Sales to supervised employees or regulated entities, § 10-16-13.2
- Political activity prohibitions, § 10-16-3.1
- Legislator and family conflicts of interest, § 10-16-9
- Due diligence responsibilities of contract negotiators, § 10-16-7(C)

Gift Act: §§ 10-16B-1 to -4

Limits gifts to any state employee, candidates, or family member to:

- \$250 per gift (from “restricted donors”)

- \$1000 per year (from lobbyists, their employers, or contractors)

State officer or employee may not solicit donations for charities from regulated entities or where purpose is to influence their official acts.

Financial Disclosure Act: §§ 10-16A-1 to -8

Requires disclosure of financial interests by state officials and employees, particularly when they may influence official actions.

Whistleblower Protection Act: §§ 10-16C-1 to -6

Protects public employees who disclose improper conduct by state or local government agencies against retaliation.

Fraud Against Taxpayers Act: §§ 44-9-1 to -14

Empowers citizens or the Attorney General to file *qui tam* action for damages and restitution against anyone filing false claims with the state. Protects whistleblowers, both from within and outside state government, from retaliation.

Procurement Code: §§ 13-1-28 to -199

Governs purchases of goods, services and construction by state and local agencies, including provisions prohibiting participation by interested employees or their family members, campaign contributions to public officials involved in a purchase, contingent fees, contemporaneous employment by contractors, and use of confidential information.

Personnel Act: § 10-9-21 (“Little Hatch Act”)

Applies to state employees in the classified service:

- Prevents public employees from seeking *partisan* political office
- Prevents supervisors from requiring political contributions
- No partisan political activity while on duty
- Pre-empted by federal Hatch Act where applicable

Criminal Statutes:

- Bribery: § 30-24-2
- Concealing campaign funds: § 1-19-34.3
- Demanding illegal fees: § 30-23-1
- Embezzlement: § 30-16-8
- Extortion: § 30-16-9
- RICO: § 30-42-4
- Soliciting or receiving illegal kickbacks: § 30-41-1
- Tampering with public records: § 30-26-1
- Unlawful interest in a public contract: § 30-23-6

Federal Criminal Laws

- RICO: 18 U.S.C. §§ 1961, 1962
- Extortion: 18 U.S.C. § 1951
- Mail fraud: 18 U.S.C. § 1341
- Using fictitious name: 18 U.S.C. § 1342
- Wire fraud: 18 U.S.C. § 1343
- Tax evasion: 26 U.S.C. § 720

PROVIDED BY THE OFFICE OF THE NEW MEXICO ATTORNEY GENERAL.



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Northern New Mexico College

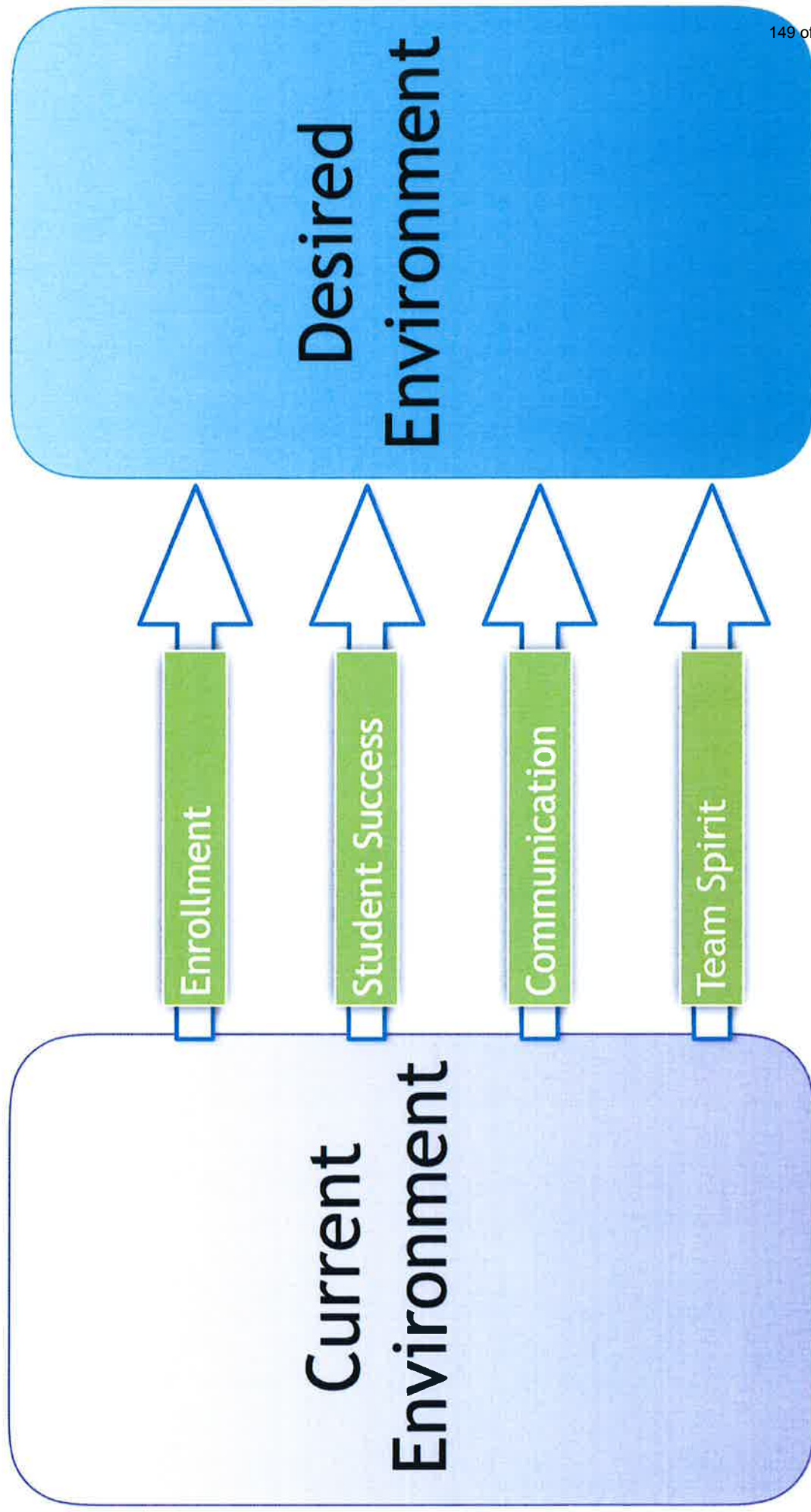
Strategic Direction DRAFT

August 2017



NORTHERN New Mexico College

Lines of Effort



Obstacles

Enrollment Line of Effort

- Limited Program Offerings
- Lack of Child Care
- Recruitment Team Understaffed
- Limited Distance Ed Offerings
- High tuition and fees
- Damaged reputation
- Lack of alignment/partnership between NNMC and local high schools



Stakeholders

Enrollment Line of Effort

- Community
- Parents
- Schools
- Pueblos
- HEC in Santa Fe
- Los Alamos National Labs
- Local Businesses
- Workforce Development
- Legislature
- NMNC Employees
- Federal and State Agencies



Objectives

Enrollment Line of Effort

GOAL

To increase annual enrollment both in student head count and credit hour totals.

2022 Vision

Student head count at xx% & student credit hours at xx%

Working Themes

Dream, Journey, Thrive
Opportunity, Quality, Value... Close to Home
Find YOUR Future @ Northern



Objectives

Enrollment Line of Effort

- Strengthen Effective Partnerships with Local High Schools to Increase Pipeline
- Expand Effective Marketing and Recruitment Strategies
- Establish Student Residence Options
- Determine and Implement Appropriate Program Offerings
- Evaluate/Establish/Maintain Affordable Tuition and Fees for Long Term Sustainability



Student Success Line of Effort

GOAL

To increase student success through higher retention rates, and pathways to employment or graduate education.

2022 Vision

Annual retention rates above XX%, graduation rates above XX%, and XX% attain employment or enter graduate programs within six months of leaving NNMC.

Working Themes

Advisement - Support - Achievement



Obstacles

Student Success Line of Effort

- Many students require developmental curriculum
- Students not motivated or mature
- Lack of student support services / counseling
- Culture of poverty / students under-resourced
- Lack of understanding students' needs



Stakeholders

Student Success Line of Effort

- High Schools
- Parents and Families
- Mentors
- Tutors
- Community
- Scholarship Providers



Objectives

Student Success Line of Effort

- Evaluate And Redesign Curriculum To Minimize Academic Obstacles
- Improve Every Touchpoint In Student Services
- Increase Student Sense Of Belonging To The Northern Community
- Enhance Student Life Opportunities
- Identify And Address Shortcomings In Student Support



Communication Line of Effort

GOAL

To improve the quality, timeliness, accuracy, and consistency of communications within the College, as well as with community members and external stakeholders.

2022 Vision

All students, faculty, staff members, community members, and external stakeholders have the information they need to support the College's mission, and the opportunity to contribute to an open dialogue of continuous improvement.

Working Themes

Integrity - Responsibility - Transparency



Obstacles

Communication Line of Effort

- Lack of venues for people (including students) to express their opinions
- Old technology – use social media instead of cork boards
- Underuse of school calendar
- Lack of resources (personnel)
- Everyone works in silos (particularly between faculty and staff)
- Underutilizing Film and Digital Media Arts
- Understanding WHY we do what we do
- Good news stories not shared enough
- Lack of an organizational chart
- Lack of awareness, understanding, or feedback of existing marketing



Stakeholders

Communication Line of Effort

- Faculty, staff and students
- Local newspapers
- Broadcasters (radio and TV)
- Local community



Objectives

Communication Line of Effort

- Define And Implement An Institutional Communications Strategy That Ensures The Sharing Of Timely Relevant Content
- Establish Effective Communication Channels With All Students, Faculty And Staff
- Institutionalize Communication Channels With Community Members And External Stakeholders
- Create Venues For Suggestions And Concerns (Including An Option For Anonymity)



Team Spirit Line of Effort

GOAL

To foster a culture that celebrates the inclusion of the Northern community into a cohesive, productive and effective team.

2022 Vision

All in the Northern community know that they are respected and valued as contributing members of the College family.

Working Themes

Teamwork - Mutual Respect

Collaboration - Partnerships

NORTHERN New Mexico College



Obstacles

Team Spirit Line of Effort

- Lack of adequate resources
- Silos of effort / few interdisciplinary activities
- Heavy workload
- Not enough community participation on campus
- Lack of recognition for outstanding performance
- Low perceptions of the college
- Perception of lack of equity / fairness
- People don't feel valued / respected



Stakeholders

Team Spirit Line of Effort

- Board of Regents
- Faculty / Staff / Students
- Administrators
- Community





Objectives

Team Spirit Line of Effort

- Promote A Culture Of Mutual Respect, Ethical Behavior, Fairness, And Constructive Discourse
- Enhance Opportunities For Professional And Personal Development And Growth
- Strive For Salary Increases & Fairness
- Increase The Visibility Of The Brand
- Increase The Opportunities For Interdepartmental Activities
- Develop Functional And Welcoming Learning, Working, And Community Spaces On Both Campuses

Next Steps

- What are the **tasks** required to support each major objective?
- How do we **measure** the performance of each task?
- Are there any **milestones** for each Line of Effort (or objective) that will help guide our progress?
- **IMPLEMENTATION**, not Shelf...



Core Values

- Integrity
- Selfless Service
- Diversity and Inclusivity
- Inspiration



2017-2018 Rick Challenges

- Risk and Innovation
- Mentorship
- Mutual Respect -
Vanguards and Safeguards



MEMORANDUM

To: Board of Regents
Northern New Mexico College

From: Ricky Bejarano, Vice President for Finance & Administration

Date: August 18, 2017

Re: Fiscal Watch Report

Issue

On a monthly basis, Northern New Mexico College (NNMC) provides a set of an institutional financial reports for Board of Regent (BOR) review and approval.

Overview

The NNMC Finance Department, on a monthly basis, prepares a Fiscal Watch Report for review and discussion at the monthly Audit, Finance and Facilities Committee (AF&F) meeting. The financial report provides an overview of the institution's financial condition for all unrestricted and restricted operational funds and grants throughout the College.

The Fiscal Watch reports are presented in the format prescribed by the New Mexico Higher Education Department (NMHED) and titles at the top of the page are highlighted in turquoise. An additional report with titles highlighted in yellow is also included to provide an undated budget status report for all Budget Adjustment Requests processed through the time of the monthly AF&F meeting (not provided for July 2017).

In addition, the BOR is also provided individual reports for the following financial areas summarized in the monthly institution-wide fiscal watch report:

- Unrestricted funds (11s)
- Auxiliary Programs (12s)
- Institutional Grants (41)
- Student Aid (42)
- Plant Funds (91)

Although the NMHED requires all higher education institutions to submit Fiscal Watch reports on a quarterly basis, NNMC produces these reports on a monthly basis to insure that the BOR is regularly informed about the current financial condition of the institution.

Recommendation

Staff recommends that the Board of Regents approve the Fiscal Watch Report for the period ending July 31, 2017.

Northern New Mexico College

Statement of Net Position (Unaudited and Unadjusted) July 31, 2017

Assets

Current Assets:

Cash and Cash Equivalents	2,342,589
Short-Term Investments	-
AR - Just student	1,903,372
AR - Other than student	1,088,591
Inventories	267,452
Prepaid Expenses	6,962
Loans Receivable, net	133,951

Total Current Assets	<u>5,742,915</u>
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Non-Current Assets

Restricted Cash and Cash Equivalents	-
Restricted Short Term Investments	-
Investments Held by Others	-
Other Long-Term Investments	-
Prepaid Expenses	-
Capital Assets, net	33,400,929

Total Non-Current Assets	<u>33,400,929</u>
--------------------------	-------------------

Total Assets

<u>39,143,844</u>

Deferred Outflows of Resources

Pension Related (6/30/16 balances)	1,974,933
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Total Deferred Outflows of Resources

<u>1,974,933</u>

Liabilities

Current Liabilities

Accounts Payable	575,179
Other Accrued Liabilities	1,488,524
Deferred Income	100,062
LT Liabilities - Current Portion	-

Total Current Liabilities	<u>2,163,764</u>
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Non-Current Liabilities

Accrued Interest Payable	-
Accrued Benefit Reserves	-
Other LT Liabilities	142,216
Net Pension Liability	20,701,991

Total Non-Current Liabilities	<u>20,844,207</u>
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Total Liabilities

<u>23,007,971</u>

Deferred Inflows of Resources

Pension Related (6/30/16 balances)	2,659,419
------------------------------------	-----------

Total Deferred Inflows of Resources

<u>2,659,419</u>

Net Position

Invested in Capital Assets, net of Related Debt	33,400,929
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Restricted for:

Nonexpendable:	
Endowments	-
Expendable:	
General Activities	(70,069)
Federal Student Loans	-
Term Endowments	-
Capital Projects	-
Debt Service	-
Related Entity Activities	-

Unrestricted

Unrestricted without NFP	3,507,004
Net Fiduciary Position	(21,386,477)
Total Unrestricted (includes 6/30/16 NFP)	<u>(17,879,473)</u>

Total Net Position

<u>15,451,387</u>

Northern New Mexico College

Summary of Operating and Plant Funds (Unadjusted and Unaudited) Fiscal Year 2018

Operating Funds	FY 2018 Original Budget	FY 2018 Revised Budget	FY 2018 Actuals as of July 31, 2017	Percentage Earned/Spent
REVENUES				
Tuition & Misc Fees	\$ 3,923,369	\$ 3,923,369	\$ 1,676,107	42.7%
Federal Appropriations	-	-	-	-
State Appropriations	10,438,300	10,438,300	869,800	8.3%
Local Appropriations	-	-	-	-
Gifts, Grants & Contracts	7,120,695	7,120,695	214,529	3.0%
Endowment/Land & Perm Inc	163,525	163,525	-	0.0%
Sales & Services	724,056	724,056	12,036	1.7%
Other	32,223	32,223	58,167	180.5%
Total Revenue	22,402,168	22,402,168	2,830,639	12.6%
BEGINNING BALANCE	781,308	781,308	1,845,847	236.25%
TOTAL AVAILABLE	23,183,476	23,183,476	4,676,486	20.2%
EXPENDITURES				
Instruction & General	16,050,843	16,050,843	962,367	6.0%
Student Social & Cultural	87,880	87,880	4,835	5.5%
Research	-	-	-	-
Public Service	574,306	574,306	27,899	4.9%
Internal Services	169,739	169,739	89,367	52.6%
Student Aid	4,534,943	4,534,943	18,900	0.4%
Auxiliary Enterprises	859,053	859,053	23,245	2.7%
Intercollegiate Athletics	676,712	676,712	45,495	6.7%
Independent Operations (NMDA)	-	-	-	-
Total Expenditures	22,953,476	22,953,476	1,172,108	5.1%
NET TRANSFERS OUT / (IN)	230,000	230,000	-	-
TOTAL EXPENDITURES & TRANSFERS	23,183,476	23,183,476	1,172,108	5.1%
ENDING FUND BALANCE	\$ (0)	\$ (0)	\$ 3,504,378	

Plant Funds	FY 2018 Original Budget	FY 2018 Revised Budget	FY 2018 Actuals as of July 31, 2017	Percentage Earned/Spent
REVENUES AND TRANSFERS				
Required Student Fees				
Bond Proceeds				
Gifts, Grants and Contracts				
Interest Income				
State Appropriation	\$ 914,679	\$ 914,679	\$ (187,788)	-20.5%
Debt Service Transfers				
Other				
Total Revenues and Transfers	914,679	914,679	(187,788)	-20.5%
BEGINNING BALANCE	-	-	(62,804)	
TOTAL AVAILABLE	914,679	914,679	(250,592)	-27.4%
EXPENDITURES				
Capital Projects	914,679	914,679	(187,788)	-20.5%
Building Renewal	230,000	230,000	171	0.1%
Internal Service Renewal/Replacement				
Auxiliary Renewal/Replacement				
Debt Retirement				
Total Expenditures	1,144,679	1,144,679	(187,617)	-16.4%
NET TRANSFERS OUT / (IN)	(230,000)	(230,000)	-	0.0%
TOTAL EXPENDITURES & TRANSFERS	914,679	914,679	(187,617)	-20.5%
ENDING FUND BALANCE	\$ -	\$ -	\$ (62,974)	

Northern New Mexico College

Comparison of Operating and Plant Funds (Unadjusted and Unaudited) Fiscal Year 2018 and 2017

Operating Funds	FY 2018 Actuals as of July 31, 2017	FY 2017 Actuals as of July 31, 2016	Percentage Increase (Decrease)
REVENUES			
Tuition & Misc Fees	\$ 1,676,107	\$ 1,461,981	14.6%
Federal Appropriations	-	-	
State Appropriations	869,800	932,218	-6.7%
Local Appropriations	-	-	
Gifts, Grants & Contracts	214,529	229,923	-6.7%
Endowment/Land & Perm Inc	-	-	
Sales & Services	12,036	14,775	-18.5%
Other	58,167	30,868	88.4%
Total Revenue	2,830,639	2,669,765	6.0%
BEGINNING BALANCE	1,845,847	1,583,947	16.5%
TOTAL AVAILABLE	4,676,486	4,253,712	9.9%
EXPENDITURES			
Instruction & General	962,367	924,444	4.1%
Student Social & Cultural	4,835	4,383	10.3%
Research	-	-	
Public Service	27,899	25,075	11.3%
Internal Services	89,367	16,758	433.3%
Student Aid	18,900	6,859	175.6%
Auxiliary Enterprises	23,245	27,353	-15.0%
Intercollegiate Athletics	45,495	62,726	-27.5%
Independent Operations (NMDA)	-	-	
Total Expenditures	1,172,108	1,067,599	9.8%
NET TRANSFERS OUT / (IN)	-	264,349	-100.0%
TOTAL EXPENDITURES & TRANSFERS	1,172,108	1,331,948	-12.0%
ENDING FUND BALANCE	\$ 3,504,378	\$ 2,921,765	19.9%

Plant Funds	FY 2018 Actuals as of July 31, 2017	FY 2017 Actuals as of July 31, 2016	Percentage Increase (Decrease)
REVENUES AND TRANSFERS			
Required Student Fees			
Bond Proceeds			
Gifts, Grants and Contracts			
Interest Income			
State Appropriation	\$ (187,788)	\$ -	
Debt Service Transfers			
Other			
Total Revenues and Transfers	(187,788)	-	
BEGINNING BALANCE	(62,804)	-	
TOTAL AVAILABLE	(250,592)	-	
EXPENDITURES			
Capital Projects	(187,788)	-	
Building Renewal	171	316	-46.0%
Internal Service Renewal/Replacement			
Auxiliary Renewal/Replacement			
Debt Retirement			
Total Expenditures	(187,617)	316	-59491.4%
NET TRANSFERS OUT / (IN)	-	(264,349)	-100.0%
TOTAL EXPENDITURES AND TRANSFERS	(187,617)	(264,033)	-28.9%
ENDING FUND BALANCE	\$ (62,974)	\$ 264,033	-123.9%

Some revenues are reported on a seasonal basis or by semester and therefore may affect the Increase/(Decrease) to Fund Balance

Northern New Mexico College

Statement of Cash Flows

(Unaudited and Unadjusted)

July 31, 2017

Cash Flows from Operating Activities	
Receipts from student tuition and fees	\$ 95,646
Receipts from grants and contracts	581,332
Other receipts	-
Payments to or on behalf of employees	(843,376)
Payment to suppliers for goods and services	(615,841)
Receipts from Sales and Services	12,036
Payments for scholarships	(18,900)
Other Operating Revenue	(13,693)
Net cash (used) by operating activities	<u>(802,795)</u>
Cash Flows from Non-Capital Financing Activities	
State Appropriations	682,011
Gifts for other than Capital Purposes	-
Private Gifts for Endowment	-
Other Non-operating Expense	-
Net Cash provided (used) for non-capital financing activities	<u>682,011</u>
Cash Flows from Capital and Related Financing Activities	
Proceeds from Capital Debt	-
Capital Gifts, Grants and contracts	-
Purchase/Construction/Renovation of Capital Assets	-
Principal Received/Paid on Capital Debt and Leases	-
Interest and Fees Paid on Capital Debt and Leases	-
Building Fees Received from Students	-
Net Cash provided (used) for capital financing activities	<u>-</u>
Cash Flows from Investing Activities	
Investment Earnings	-
Net Cash provided by Investing Activities	<u>-</u>
Increase (Decrease) in Cash and Cash Equivalents	(120,784)
Cash and Cash Equivalents- beginning of year	2,463,372
Cash and Cash Equivalents- end of reporting period	<u>\$ 2,342,588</u>

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

11 Current Unrestricted Funds

	CURRENT YEAR	PRIOR YEAR	COMPARISON	
	7/31/2017	7/31/2016	CURRENT TO PRIOR	PERCENT
REVENUES:				
Academic Tuition	1,039,312.49	906,462.52	132,849.97	14.66
Continuing Educ Tuition and Fees	569.00	34,823.50	(34,254.50)	(98.37)
Academic Fees	563,181.14	462,460.42	100,720.72	21.78
Nursing Standardized Testing Fee	6,348.50	1,712.50	4,636.00	270.72
State Government Appropriations	849,200.00	910,368.00	(61,168.00)	(6.72)
Government Grants and Contracts	20,382.62	21,383.64	(1,001.02)	(4.68)
Other Sources of Revenue	58,660.50	32,954.63	25,705.87	78.00
TOTAL REVENUES:	2,537,654.25	2,370,165.21	167,489.04	7.07
EXPENDITURES:				
Instruction	201,404.97	205,167.13	(3,762.16)	(1.83)
Academic Support	87,390.79	90,905.66	(3,514.87)	(3.87)
Student Services	108,406.48	92,488.13	15,918.35	17.21
Institutional Support	253,566.02	(6,142.75)	259,708.77	
Operations and Maintenance of Plant	115,206.60	110,368.71	4,837.89	4.38
Public Service	27,899.43	25,075.39	2,824.04	11.26
Internal Service Departments	88,684.62	16,758.02	71,926.60	429.21
TOTAL EXPENDITURES:	882,558.91	534,620.29	347,938.62	65.08
TRANSFERS AMONG FUNDS:				
Transfer In	-	8,644.25	(8,644.25)	(100.00)
Transfer Out	-	-	-	-
TOTAL TRANSFERS AMONG FUNDS:	-	8,644.25	(8,644.25)	(100.00)
NET INCREASE/DECREASE IN NET ASSETS	1,655,095.34	1,844,189.17	(189,093.83)	(10.25)
Fund Balance, Beginning of the Period	1,833,517.09	1,480,696.82	352,820.27	
Fund Balance, End of the Period	3,488,612.43	3,324,885.99	163,726.44	4.92

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

12 Current Unrestricted Funds Designated

	CURRENT YEAR	PRIOR YEAR	COMPARISON	
	7/31/2017	7/31/2016	CURRENT TO PRIOR	PERCENT
REVENUES:				
Academic Fees	38,113.86	32,298.03	5,815.83	18.01
State Government Appropriations	20,600.00	21,850.00	(1,250.00)	(5.72)
Other Sources of Revenue	22.00	-	22.00	
Auxiliary Enterprises	1,115.60	1,172.47	(56.87)	(4.85)
Housing and Food Service	6,770.12	5,559.75	1,210.37	21.77
Sostenga	-	704.50	(704.50)	(100.00)
Staff and Faculty Housing	3,528.14	5,161.28	(1,633.14)	(31.64)
Inter-Collegiate Athletics	120.42	90.57	29.85	32.96
TOTAL REVENUES:	70,270.14	66,836.60	3,433.54	5.14
EXPENDITURES:				
Student Services	16,250.00	-	16,250.00	
Operations and Maintenance of Plant	-	-	-	-
Auxiliary Enterprises	23,244.50	27,353.04	(4,108.54)	(15.02)
Intercollegiate Athletics	45,495.11	62,726.34	(17,231.23)	(27.47)
TOTAL EXPENDITURES:	84,989.61	90,079.38	(5,089.77)	(5.65)
TRANSFERS AMONG FUNDS:				
Transfer In	-	-	-	-
Transfer Out	-	-	-	-
TOTAL TRANSFERS AMONG FUNDS:	-	-	-	-
NET INCREASE/DECREASE IN NET ASSETS	(14,719.47)	(23,242.78)	8,523.31	36.67
Fund Balance, Beginning of the Period	88,305.65	91,744.06	(3,438.41)	
Fund Balance, End of the Period	73,586.18	68,501.28	5,084.90	7.42

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

41 Grants

	CURRENT YEAR	PRIOR YEAR	COMPARISON	
	7/31/2017	7/31/2016	CURRENT TO PRIOR	PERCENT
REVENUES:				
Government Grants and Contracts	150,215.46	184,676.84	(34,461.38)	(18.66)
Private Gifts and Grants	23,370.70	9,566.22	13,804.48	144.30
TOTAL REVENUES:	173,586.16	194,243.06	(20,656.90)	(10.63)
EXPENDITURES:				
Instruction	140,472.11	91,529.07	48,943.04	53.47
Academic Support	637.54	945.97	(308.43)	(32.61)
Student Services	14,653.93	47,594.85	(32,940.92)	(69.21)
Institutional Support	9,542.58	39,392.26	(29,849.68)	(75.78)
Student Aid Grants and Stipends	1,200.00	6,136.66	(4,936.66)	(80.45)
TOTAL EXPENDITURES:	166,506.16	185,598.81	(19,092.65)	(10.29)
TRANSFERS AMONG FUNDS:				
Transfer In	-	-	-	-
Transfer Out	-	(8,644.25)	8,644.25	100.00
TOTAL TRANSFERS AMONG FUNDS:	-	(8,644.25)	8,644.25	100.00
NET INCREASE/DECREASE IN NET ASSETS	7,080.00	-	7,080.00	
Fund Balance, Beginning of the Period	-	-	-	
Fund Balance, End of the Period	7,080.00	-	7,080.00	

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

42 Student Aid

	CURRENT YEAR 7/31/2017	PRIOR YEAR 7/31/2016	COMPARISON CURRENT TO PRIOR PERCENT	
REVENUES:				
Government Grants and Contracts	-	1.00	(1.00)	(100.00)
Private Gifts and Grants	20,605.00	-	20,605.00	
Other Sources of Revenue	-	129.50	(129.50)	(100.00)
Sostenga	-	-	-	-
TOTAL REVENUES:	20,605.00	130.50	20,474.50	15,689.27
EXPENDITURES:				
Instruction	-	-	-	-
Academic Support	-	-	-	-
Student Services	15,546.91	8,261.25	7,285.66	88.19
Student Aid Grants and Stipends	17,700.00	722.00	16,978.00	2,351.52
TOTAL EXPENDITURES:	33,246.91	8,983.25	24,263.66	270.10
TRANSFERS AMONG FUNDS:				
Transfer In	-	-	-	-
Transfer Out	-	-	-	-
TOTAL TRANSFERS AMONG FUNDS:	-	-	-	-
NET INCREASE/DECREASE IN NET ASSETS	(12,641.91)	(8,852.75)	(3,789.16)	(42.80)
Fund Balance, Beginning of the Period	(64,507.37)	817.58	(65,324.95)	
Fund Balance, End of the Period	(77,149.28)	(8,035.17)	(69,114.11)	

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

91 Unexpended Plant Funds

	CURRENT YEAR 7/31/2017	PRIOR YEAR 7/31/2016	COMPARISON CURRENT TO PRIOR	PERCENT
REVENUES:				
Transfer In	-	-	-	-
TOTAL REVENUES:	-	-	-	-
EXPENDITURES:				
Operations and Maintenance of Plant	-	-	-	-
Plant Funds	170.73	315.90	(145.17)	(45.95)
TOTAL EXPENDITURES:	170.73	315.90	(145.17)	(45.95)
NET INCREASE/DECREASE IN NET ASSETS	(170.73)	(315.90)	145.17	45.95
Fund Balance, Beginning of the Period	(62,803.57)	-	(62,803.57)	
Fund Balance, End of the Period	(62,974.30)	(315.90)	(62,658.40)	

Statement of
Revenues, Expenditures, and Other Changes in Financial Position
for the period ended July 31, 2017

92 Capital Projects

	CURRENT YEAR	PRIOR YEAR	COMPARISON	
	7/31/2017	7/31/2016	CURRENT TO PRIOR	PERCENT
REVENUES:				
State Government Appropriations	(187,788.06)	-	(187,788.06)	
TOTAL REVENUES:	(187,788.06)	-	(187,788.06)	
EXPENDITURES:				
Plant Funds	(187,788.06)	-	(187,788.06)	
TOTAL EXPENDITURES:	(187,788.06)	-	(187,788.06)	
TRANSFERS AMONG FUNDS:				
Transfer In	-	-	-	-
Transfer Out	-	-	-	-
TOTAL TRANSFERS AMONG FUNDS:	-	-	-	-
NET INCREASE/DECREASE IN NET ASSETS	-	-	-	-
Fund Balance, Beginning of the Period	-	-	-	
Fund Balance, End of the Period	-	-	-	

NORTHERN New Mexico College**MEMORANDUM**

To: Board of Regents,
Northern New Mexico College

From: Ricky Bejarano, Interim Vice President for Finance & Administration

Date: August 18, 2017

Re: Monthly Budget Adjustment Requests

Issue

On a monthly basis, Northern New Mexico College (NNMC) provides all Budget Adjustment Requests (BARs) for review and approval by the Board of Regents (BOR). Included in the packet are BARs for August, 2017.

Overview

NNMC prepares BARs on an ongoing basis to ensure the transparent management and expenditure of all restricted and unrestricted financial resources of the college follow statutory requirements, state procurement and internal budgetary guidelines. In addition to the actual BARs and supporting line item budget information, the NNMC Finance Department, also provides a year-to-date listing of all BARs processed by the institution in the normal course of business. The various types of budget adjustments presented to the BOR for review and approval include:

- Initial Budgets (0 restricted, 0 unrestricted)
- Budget Increases (2 restricted, 2 unrestricted)
- Budget Decreases (0 restricted, 0 unrestricted)
- Budget Transfers (0 restricted, 0 unrestricted)
- Total BARS – 4 (Total BARS Year to Date – FY17=305, FY18=8)

The Interim Vice President of Finance and Administration is responsible for the approval of all intra-department budget transfers and regular line item budget maintenance, resulting in a net zero impact to institutional operating budgets. BOR authorization is requested for all inter-department budget transfers and budget adjustments requiring an increase or decrease in current budget authorization levels.

The Audit, Finance and Facilities Committee is responsible for reviewing all Budget Adjustment Requests prior to the monthly BOR meetings for final action.

Recommendation

Staff recommends that the Board of Regents approve the attached Budget Adjustment Requests as prepared internally through August 8, 2017.

Northern New Mexico College

FY17 (2016-2017)

Tuesday, August 08, 2017

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170000				11000	1005	Instruction & General	202.56	\$0
16170001	Unrestricted	Transfer	9/29/2016	12016	2653	Continuing Ed	0.00	\$0
16170002	Unrestricted	Maintenance	8/3/2016	11000	4521	Instruction & General	0.00	\$0
16170003	Restricted	Increase	9/29/2016	35000	5291	Foundation-Unrestricted	0.00	\$30,210
16170004	Unrestricted	Maintenance	8/3/2016	91110	4521	Building Repair & Replacement	0.00	\$0
16170005	Restricted	Maintenance	6/28/2017	37000	7300	Permanently Restricted/Endowme	0.00	\$0
16170006	Unrestricted	Maintenance	8/3/2016	11303	1022	Indirect Cost Funds	0.00	\$0
16170007	Unrestricted	Maintenance	8/3/2016	11011	2431	Nursing Enhancement	0.00	\$0
16170008	Unrestricted	Decrease	9/29/2016	35000	1005	Foundation-Unrestricted	0.00	(\$6,000)
16170009	Unrestricted	Maintenance	8/3/2016	34000	1005	Foundation-Operating	0.00	\$0
16170010	Unrestricted	Increase	9/29/2016	11012	1007	Department Discretionary	0.00	\$20,512
16170011	Unrestricted	Increase	9/29/2016	11201	3041	Financial Aid Admin Cost Allowa	0.00	\$14,296
16170012	Restricted	Increase	9/29/2016	41181	2811	ABE Federal	0.00	\$14,712
16170013	Unrestricted	Maintenance	8/3/2016	91110	4522	Building Repair & Replacement	0.00	\$0
16170014	Restricted	Decrease	9/29/2016	40109	2263	NIH BUILD	0.00	(\$12,133)
16170015	Combined	Increase	9/29/2016	36800	7401	Foundation SERPA End Invesetm	0.00	\$20,000
16170016	Unrestricted	Maintenance	8/3/2016	11000	4521	Instruction & General	0.00	\$0
16170017	Unrestricted	Maintenance	8/16/2016	11730	3421	Small Business Development Ctr	0.00	(\$5,814)
16170018	Unrestricted	Increase	9/29/2016	11730	3421	Small Business Development Ctr	0.00	\$7,860
16170019	Restricted	Maintenance	8/16/2016	41193	2571	Carl Perkins - Vocational Services	0.00	(\$334)
16170020	Unrestricted	Maintenance	8/16/2016	11000	2355	Instruction & General	0.00	\$0
16170021	Unrestricted	Maintenance	8/16/2016	34000	1005	Foundation-Operating	0.00	\$0
16170022	Unrestricted	Maintenance	8/16/2016	11000	4011	Instruction & General	0.00	\$0
16170023	Unrestricted	Maintenance	8/16/2016	11000	2355	Instruction & General	0.00	\$0
16170024	Unrestricted	Maintenance	8/16/2016	11000	1005	Instruction & General	0.00	\$0
16170025	Restricted	Maintenance	8/16/2016	41101	2725	High School Equivalent Program	0.00	\$0

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170026	Unrestricted	Maintenance	8/16/2016	11012	2212	Department Discretionary	0.00	\$0
16170027	Unrestricted	Maintenance	8/16/2016	12010	3741	El Rito Operations	0.00	\$0
16170028	Restricted	Increase	9/29/2016	42428	3666	Consulate of Mexico in Albuquerque	0.00	\$1,000
16170029	Unrestricted	Maintenance	8/30/2016	11000	4021	Instruction & General	0.00	\$0
16170030	Restricted	Maintenance	8/30/2016	42428	3666	Consulate of Mexico in Albuquerque	0.00	\$0
16170031	Unrestricted	Maintenance	8/30/2016	11000	2511	Instruction & General	0.00	\$0
16170032	Unrestricted	Maintenance	8/22/2016	11801	3501	Internal Services	0.00	(\$21,600)
16170033	Restricted	Increase	9/29/2016	40111	2263	NSF BEST	0.00	\$182,426
16170034	Foundation	Increase	9/29/2016	36000	6200	Temporarily Restricted	0.00	\$11,850
16170035	Unrestricted	Maintenance	8/30/2016	11000	1022	Instruction & General	0.00	\$0
16170036	Restricted	Decrease	9/29/2016	41212	2811	ABE Instructional Materials	0.00	(\$412)
16170037	Unrestricted	Maintenance	8/30/2016	11000	1005	Instruction & General	0.00	\$0
16170038	Unrestricted	Maintenance	9/20/2016	11000	2263	Instruction & General	0.00	\$0
16170039	Unrestricted	Maintenance	9/20/2016	11011	2431	Nursing Enhancement	0.00	\$0
16170040	Unrestricted	Maintenance	9/20/2016	11000	2263	Instruction & General	0.00	\$0
16170041	Unrestricted	Maintenance	9/20/2016	12010	3741	El Rito Operations	0.00	\$0
16170042	Unrestricted	Transfer	9/29/2016	12010	3741	El Rito Operations	0.00	\$0
16170043	Unrestricted	Maintenance	9/20/2016	12010	3741	El Rito Operations	0.00	\$0
16170044	Unrestricted	Maintenance	9/20/2016	11000	2602	Instruction & General	0.00	\$0
16170045	Unrestricted	Transfer	9/29/2016	12010	3741	El Rito Operations	0.00	\$0
16170046	Unrestricted	Maintenance	10/12/2016	11000	3022	Instruction & General	0.00	\$0
16170047	Unrestricted	Increase	10/25/2016	11201	3041	Financial Aid Admin Cost Allowa	0.00	\$75
16170048	Unrestricted	Maintenance	10/12/2016	34000	4206	Foundation-Operating	0.00	\$0
16170049	Unrestricted	Maintenance	10/12/2016	34000	5212	Foundation-Operating	0.00	\$0
16170050	Unrestricted	Maintenance	10/12/2016	11000	3022	Instruction & General	0.00	\$0
16170051	Unrestricted	Increase	10/25/2016	11000	4014	Instruction & General	0.00	\$9,354
16170052	Unrestricted	Increase	10/25/2016	11730	3421	Small Business Development Ctr	0.00	\$53,622
16170053	Restricted	Maintenance	10/12/2016	41170	2212	Alliance for Minority Participatio	0.00	\$0
16170054	Unrestricted	Increase	10/25/2016	11012	2355	Department Discretionary	0.00	\$12,750
16170055	Restricted	Initial Budget	10/25/2016	41102	3052	College Assistance Migrant Progr	0.00	\$441,643

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170056	Restricted	Increase	10/25/2016	40103	2263	NSF DUE NMIMT	0.00	\$10,852
16170057	Unrestricted	Maintenance	10/12/2016	34000	1005	Foundation-Operating	0.00	\$0
16170058	Unrestricted	Increase	10/25/2016	12010	3741	El Rito Operations	0.00	\$20,000
16170059	Unrestricted	Maintenance	10/12/2016	36002	6600	Foundation-Conoco Phillips	0.00	\$0
16170060	Unrestricted	Maintenance	10/12/2016	11011	2431	Nursing Enhancement	0.00	\$0
16170061	Unrestricted	Transfer	10/25/2016	83000	3221	Student Services Support	0.00	\$0
16170062	Unrestricted	Maintenance	10/12/2016	11303	1020	Indirect Cost Funds	0.00	\$0
16170063	Restricted	Initial Budget	10/25/2016	40112	2355	NSF INCLUDES	0.50	\$184,478
16170064	Unrestricted	Maintenance	10/12/2016	11000	2826	Instruction & General	0.00	\$0
16170065	Unrestricted	Maintenance	10/12/2016	11000	1077	Instruction & General	0.00	\$0
16170066	Unrestricted	Maintenance	10/12/2016	12105	3127	Athletics Administration	0.00	\$0
16170067	Restricted	Initial Budget	10/25/2016	40113	2355	NSF EDUCERE	0.00	\$151,227
16170068	Unrestricted	Maintenance	10/12/2016	11000	1007	Instruction & General	0.00	\$0
16170069	Restricted	Maintenance	10/12/2016	40112	2355	NSF INCLUDES	0.00	\$0
16170070	Unrestricted	Maintenance	10/12/2016	42210	3647	Teacher Loan for Service	0.00	\$0
16170071	Unrestricted	Increase	10/25/2016	42210	3647	Teacher Loan for Service	0.00	\$1,000
16170072	Unrestricted	Maintenance	10/12/2016	12105	3121	Athletics Administration	0.00	\$0
16170073	Unrestricted	Maintenance	10/25/2016	11303	1020	Indirect Cost Funds	0.00	\$0
16170074	Unrestricted	Maintenance	10/25/2016	11201	3041	Financial Aid Admin Cost Allowa	0.00	\$0
16170075	Unrestricted	Maintenance	10/25/2016	11000	1005	Instruction & General	0.00	\$0
16170076	Unrestricted	Maintenance	10/25/2016	34000	5212	Foundation-Operating	0.00	\$0
16170077	Unrestricted	Maintenance	10/25/2016	11000	1022	Instruction & General	0.00	\$0
16170078	Unrestricted	Maintenance	10/25/2016	11012	2355	Department Discretionary	0.00	\$0
16170079	Restricted	Maintenance	10/25/2016	40111	2263	NSF BEST	0.00	\$0
16170080	Restricted	Maintenance	10/25/2016	40113	2355	NSF EDUCERE	0.00	\$0
16170081	Restricted	Maintenance	10/25/2016	41211	2811	ABE State	0.00	\$0
16170082	Unrestricted	Increase	12/1/2016	11000	4014	Instruction & General	0.00	\$1,560
16170083	Unrestricted	Increase	12/1/2016	12012	3756	Sostenga	0.00	\$705
16170084	Restricted	Maintenance	10/28/2016	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170085	Unrestricted	Maintenance	10/28/2016	91110	4522	Building Repair & Replacement	0.00	\$0

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BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170086	Unrestricted	Maintenance	10/28/2016	11302	1005	President's Discretionary	0.00	\$0
16170087	Unrestricted	Maintenance	10/28/2016	11000	4011	Instruction & General	0.00	\$0
16170088	Unrestricted	Maintenance	10/28/2016	11000	1060	Instruction & General	0.00	\$0
16170089	Unrestricted	Maintenance	10/28/2016	12105	3121	Athletics Administration	0.00	\$0
16170090	Unrestricted	Maintenance	10/28/2016	34000	4206	Foundation-Operating	0.00	\$0
16170091	Unrestricted	Increase	12/1/2016	12105	3123	Athletics Administration	0.00	\$1,384
16170092	Unrestricted	Maintenance	11/3/2016	11000	2421	Instruction & General	0.00	\$0
16170093	Unrestricted	Maintenance	11/3/2016	11303	1020	Indirect Cost Funds	0.00	\$0
16170094	Unrestricted	Maintenance	11/3/2016	83027	3211	Student Organizations	0.00	\$0
16170095	Unrestricted	Maintenance	11/3/2016	91210	4521	Equipment Repair & Replacemen	0.00	\$0
16170096	Unrestricted	Transfer	12/1/2016	12010	3741	El Rito Operations	0.00	\$0
16170097	Unrestricted	Maintenance	11/17/2016	12105	3121	Athletics Administration	0.00	\$0
16170098	Unrestricted	Maintenance	11/17/2016	34000	5212	Foundation-Operating	0.00	\$0
16170099	Unrestricted	Maintenance	11/17/2016	11000	1080	Instruction & General	0.00	\$0
16170100	Restricted	Increase	12/1/2016	41191	2355	Perkins Redistribution Funds	0.00	\$9,202
16170101	Restricted	Increase	12/1/2016	41456	2268	STEM Academy	0.00	\$20,756
16170102	Restricted	Increase	12/1/2016	41161	3052	College Assisted Migrant Progra	0.00	\$60,171
16170103	Restricted	Maintenance	11/17/2016	40103	2263	NSF DUE NMIMT	0.00	\$0
16170104	Unrestricted	Maintenance	11/17/2016	11000	1080	Instruction & General	0.00	\$0
16170105	Restricted	Maintenance	11/17/2016	41455	2263	The Grass Foundation	0.00	\$0
16170106	Restricted	Increase	12/1/2016	41433	2263	LANS Chemistry	0.00	\$9,616
16170107	Restricted	Increase	12/1/2016	41454	2263	PEER Project	0.00	\$4,183
16170108	Restricted	Increase	12/1/2016	40106	2263	NM INBRE	0.00	\$23,111
16170109	Unrestricted	Maintenance	11/17/2016	11801	3511	Internal Services	0.00	\$0
16170110	Restricted	Decrease	12/1/2016	40104	2355	NSF DUE PEARL	0.00	(\$7,271)
16170111	Restricted	Increase	12/1/2016	40107	2355	Research Infrastructure Improve	0.00	\$7,299
16170112	Restricted	Increase	12/1/2016	40108	2355	NSF CC*DNI	0.00	\$3,682
16170113	Restricted	Increase	12/1/2016	40109	2263	NIH BUILD	0.00	\$358
16170114	Restricted	Increase	12/1/2016	40110	2268	SWNRCT Program USDA	0.00	\$21,255
16170115	Restricted	Increase	12/1/2016	41101	2725	High School Equivalent Program	0.00	\$72,062

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170116	Unrestricted	Maintenance	11/17/2016	34000	4206	Foundation-Operating	0.00	\$0
16170117	Unrestricted	Maintenance	11/17/2016	11013	2571	Continuing Ed	0.00	\$0
16170118	Unrestricted	Decrease	12/1/2016	11000	4014	Instruction & General	0.00	(\$433,039)
16170119	Unrestricted	Maintenance	11/17/2016	11000	2052	Instruction & General	0.00	\$0
16170120	Unrestricted	Maintenance	11/17/2016	11000	2355	Instruction & General	0.00	\$0
16170121	Unrestricted	Maintenance	11/17/2016	12005	3711	Northern Bookstore	0.00	\$0
16170122	Unrestricted	Maintenance	11/17/2016	11000	1007	Instruction & General	0.00	\$0
16170123	Unrestricted	Increase	12/1/2016	12010	3741	El Rito Operations	0.00	\$20,000
16170124	Unrestricted	Maintenance	12/7/2016	11000	1007	Instruction & General	0.00	\$0
16170125	Restricted	Maintenance	12/7/2016	41161	3052	College Assisted Migrant Progra	0.00	(\$4,450)
16170126	Unrestricted	Increase	12/7/2019	11013	2829	Continuing Ed	0.00	\$1,200
16170127	Restricted	Maintenance	12/7/2016	41161	3052	College Assisted Migrant Progra	0.00	(\$1,101)
16170128	Unrestricted	Increase	12/7/2016	11012	2114	Department Discretionary	0.00	\$670
16170129	Restricted	Maintenance	12/7/2016	40111	2263	NSF BEST	0.00	\$0
16170130	Restricted	Maintenance	12/7/2016	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170131	Unrestricted	Maintenance	12/7/2016	83000	3221	Student Services Support	0.00	\$0
16170132	Unrestricted	Maintenance	12/7/2016	34000	4206	Foundation-Operating	0.00	\$0
16170133	Unrestricted	Maintenance	12/7/2016	34000	5212	Foundation-Operating	0.00	\$0
16170134	Restricted	Increase	1/26/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$669,616
16170135	Restricted	Increase	1/26/2017	41141	3052	Educational Opportunity Ctr	0.00	\$9,440
16170136	Unrestricted	Maintenance	1/19/2017	11000	4522	Instruction & General	0.00	\$0
16170137	Restricted	Increase	1/26/2017	41142	2355	Title V-Avance	0.00	\$38,781
16170138	Restricted	Maintenance	1/19/2017	40107	2355	Research Infrastructure Improve	0.00	\$185
16170139	Unrestricted	Maintenance	1/19/2017	11000	2263	Instruction & General	0.00	\$0
16170140	Unrestricted	Maintenance	1/19/2017	11000	1031	Instruction & General	0.00	\$0
16170141	Unrestricted	Maintenance	1/19/2017	12105	3121	Athletics Administration	0.00	\$0
16170142	Unrestricted	Maintenance	1/19/2017	11000	2871	Instruction & General	0.00	\$0
16170143	Restricted	Increase	1/26/2017	41143	1030	Title V-Exito	0.00	\$16,843
16170144	Restricted	Increase	1/26/2017	40114	2268	USDA OASCR	0.00	\$10,000
16170145	Unrestricted	Increase	1/26/2017	11012	2355	Department Discretionary	0.00	\$20,895

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170146	Restricted	Maintenance	1/19/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170147	Restricted	Maintenance	1/19/2017	41433	2263	LANs Chemistry	0.00	\$0
16170148	Restricted	Maintenance	1/19/2017	40109	2263	NIH BUILD	0.00	\$0
16170149	Unrestricted	Maintenance	1/19/2017	11000	4011	Instruction & General	0.00	\$0
16170150	Unrestricted	Maintenance	1/19/2017	11000	3022	Instruction & General	0.00	\$0
16170151	Unrestricted	Maintenance	1/19/2017	11000	1020	Instruction & General	0.00	\$0
16170152	Unrestricted	Transfer	1/26/2017	11303	1020	Indirect Cost Funds	0.00	\$0
16170153	Unrestricted	Maintenance	2/3/2017	83027	3211	Student Organizations	0.00	\$0
16170154	Restricted	Increase	1/26/2017	41144	2355	Title III NRGSC-NNMC	0.00	\$429,598
16170155	Unrestricted	Increase	1/26/2017	92535	4521	GOB 2014 Infrastructure	0.00	\$396,278
16170156	Restricted	Increase	1/26/2017	41449	2355	LANL Fndn STEM Outreach Matc	0.00	\$1,500
16170157	Unrestricted	Maintenance	1/19/2017	11000	2355	Instruction & General	0.00	\$0
16170158	Restricted	Maintenance	1/19/2017	40106	1007	NM INBRE	0.00	\$0
16170159	Restricted	Maintenance	1/19/2017	41454	2263	PEER Project	0.00	\$0
16170160	Restricted	Increase	1/26/2017	41170	2212	Alliance for Minority Participatio	0.00	\$1,000
16170161	Restricted	Maintenance	2/3/2017	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170162	Restricted	Maintenance	2/3/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170163	Unrestricted	Maintenance	2/3/2017	11000	2431	Instruction & General	0.00	\$0
16170164	Unrestricted	Transfer	3/20/2017	11000	1022	Instruction & General	0.00	\$0
16170165	Unrestricted	Increase	3/20/2017	92531	4521	GOB-2012 Power, Security & Equi	0.00	\$50,679
16170166	Restricted	Maintenance	2/3/2017	92532	4521	STB-2013 J. Montoya Renovation	0.00	\$0
16170167	Unrestricted	Decrease	3/20/2017	92536	2826	GO Bond 2014 Library Allocation	0.00	(\$510)
16170168	Unrestricted	Increase	3/20/2017	92537	4521	STB 2015 Infrastructure Improve	0.00	\$200,000
16170169	Unrestricted	Increase	3/20/2017	92538	4521	STB 2015 Farmers Market Project	0.00	\$60,000
16170170	Unrestricted	Maintenance	2/3/2017	11000	2616	Instruction & General	0.00	\$0
16170171	Restricted	Maintenance	2/3/2017	41212	2811	ABE Instructional Materials	0.00	\$0
16170172	Restricted	Maintenance	2/3/2017	40106	2263	NM INBRE	0.00	\$0
16170173	Restricted	Maintenance	2/3/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170174	Unrestricted	Maintenance	2/3/2017	11000	2263	Instruction & General	0.00	\$0
16170175	Unrestricted	Maintenance	2/16/2017	12010	3741	El Rito Operations	0.00	\$0

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170176	Unrestricted	Maintenance	2/16/2017	12105	3123	Athletics Administration	0.00	\$0
16170177	Restricted	Maintenance	2/16/2017	40112	2355	NSF INCLUDES	0.00	\$0
16170178	Unrestricted	Maintenance	2/16/2017	11012	2355	Department Discretionary	0.00	\$0
16170179	Unrestricted	Maintenance	2/16/2017	11000	1080	Instruction & General	0.00	\$0
16170180	Unrestricted	Increase	3/20/2017	83000	3221	Student Services Support	0.00	\$3,779
16170181	Restricted	Decrease	3/20/2017	41211	2811	ABE State	0.00	(\$6,792)
16170182	Unrestricted	Maintenance	2/16/2017	11000	2432	Instruction & General	0.00	\$0
16170183	Unrestricted	Increase	3/20/2017	36000	2826	Temporarily Restricted	0.00	\$2,500
16170184	Unrestricted	Maintenance	2/16/2017	11000	1077	Instruction & General	0.00	\$0
16170185	Unrestricted	Decrease	3/20/2017	42110	3643	NMSIG	0.00	(\$14,412)
16170186	Unrestricted	Increase	3/20/2017	42355	3623	Fed Direct Loan Unsubsidized	0.00	\$50,000
16170187	Restricted	Maintenance	3/6/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$0
16170188	Restricted	Maintenance	3/6/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170189	Restricted	Maintenance	3/6/2017	40113	2355	NSF EDUCERE	0.00	\$0
16170190	Unrestricted	Maintenance	3/6/2017	11000	1080	Instruction & General	0.00	\$0
16170191	Restricted	Decrease	3/20/2017	41221	2132	American Indian Education Progr	0.00	(\$400,000)
16170192	Restricted	Maintenance	3/6/2017	40103	2263	NSF DUE NMIMT	0.00	\$0
16170193	Restricted	Increase	3/20/2017	41458	2268	LANL Rio Arriba Internship Prog	0.00	\$50,000
16170194	Unrestricted	Maintenance	3/6/2017	92537	4521	STB 2015 Infrastructure Improve	0.00	\$0
16170195	Unrestricted	Maintenance	3/6/2017	11000	2355	Instruction & General	0.00	\$0
16170196	Unrestricted	Maintenance	3/6/2017	11000	2052	Instruction & General	0.00	\$0
16170197	Unrestricted	Maintenance	3/6/2017	83027	3211	Student Organizations	0.00	\$0
16170198	Restricted	Maintenance	3/6/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170199	Restricted	Maintenance	3/6/2017	41456	2268	STEM Academy	0.00	\$0
16170200	Restricted	Maintenance	3/6/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170201	Unrestricted	Maintenance	3/6/2017	12105	3121	Athletics Administration	0.00	\$0
16170202	Restricted	Maintenance	3/6/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170203	Restricted	Maintenance	3/6/2017	41102	3052	College Assistance Migrant Progr	0.00	(\$1,576)
16170204	Unrestricted	Maintenance	3/6/2017	11000	2431	Instruction & General	0.00	\$0
16170205	Restricted	Maintenance	3/8/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170206	Restricted	Maintenance	3/8/2017	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170207	Unrestricted	Maintenance	3/8/2017	11000	1022	Instruction & General	0.00	\$0
16170208	Unrestricted	Increase	3/20/2017	11201	3041	Financial Aid Admin Cost Allowa	0.00	\$205
16170209	Restricted	Maintenance	3/8/2017	40110	2268	SWNRCT Program USDA	0.00	\$0
16170210	Unrestricted	Maintenance	3/15/2017	11000	4021	Instruction & General	0.00	\$0
16170211	Unrestricted	Maintenance	3/15/2017	11000	2355	Instruction & General	0.00	\$0
16170212	Restricted	Maintenance	3/15/2017	40106	2212	NM INBRE	0.00	\$0
16170213	Restricted	Maintenance	3/15/2017	40104	2355	NSF DUE PEARL	0.00	\$0
16170214	Restricted	Maintenance	3/15/2017	41433	2263	LANS Chemistry	0.00	\$0
16170215	Restricted	Maintenance	3/15/2017	40106	2263	NM INBRE	0.00	\$0
16170216	Unrestricted	Maintenance	3/15/2017	11801	3501	Internal Services	0.00	\$0
16170217	Restricted	Maintenance	3/15/2017	41454	2263	PEER Project	0.00	\$0
16170218	Restricted	Decrease	4/24/2017	41193	2571	Carl Perkins - Vocational Services	0.00	(\$19,892)
16170219	Unrestricted	Increase	4/24/2017	83027	3281	Student Organizations	0.00	\$445
16170220	Unrestricted	Maintenance	3/31/2017	11741	3031	Veterans Center	0.00	\$0
16170221	Unrestricted	Maintenance	3/31/2017	11303	1020	Indirect Cost Funds	0.00	\$0
16170222	Unrestricted	Maintenance	3/31/2017	11000	1040	Instruction & General	0.00	\$0
16170223	Restricted	Maintenance	3/31/2017	40104	2355	NSF DUE PEARL	0.00	\$0
16170224	Restricted	Maintenance	3/31/2017	41458	2268	LANL Rio Arriba Internship Prog	0.00	\$0
16170225	Restricted	Maintenance	3/31/2017	40108	2355	NSF CC*DNI	0.00	\$0
16170226	Restricted	Maintenance	3/31/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170227	Unrestricted	Maintenance	4/17/2017	11000	1007	Instruction & General	0.00	\$0
16170228	Unrestricted	Maintenance	4/17/2017	11000	4011	Instruction & General	0.00	\$0
16170229	Unrestricted	Maintenance	4/17/2017	11000	1007	Instruction & General	0.00	\$0
16170230	Unrestricted	Maintenance	4/4/2017	11801	3512	Internal Services	0.00	\$0
16170231	Unrestricted	Maintenance	4/17/2017	92535	4521	GOB 2014 Infrastructure	0.00	\$0
16170232	Restricted	Decrease	4/24/2017	41141	3052	Educational Opportunity Ctr	0.00	(\$85,637)
16170233	Restricted	Maintenance	4/17/2017	41181	2811	ABE Federal	0.00	\$0
16170234	Unrestricted	Decrease	4/24/2017	42529	3041	State Workstudy	0.00	(\$11,000)
16170235	Unrestricted	Maintenance	4/17/2017	92536	2826	GO Bond 2014 Library Allocation	0.00	\$0

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170236	Unrestricted	Maintenance	4/17/2017	11011	2432	Nursing Enhancement	0.00	\$0
16170237	Unrestricted	Increase	4/24/2017	83027	3241	Student Organizations	0.00	\$400
16170238	Unrestricted	Maintenance	4/17/2017	12011	3731	Food Service Espanola	0.00	\$0
16170239	Unrestricted	Maintenance	4/17/2017	91210	4521	Equipment Repair & Replacemen	0.00	\$0
16170240	Unrestricted	Maintenance	5/5/2017	11000	2826	Instruction & General	0.00	\$0
16170241	Unrestricted	Increase	6/3/2017	35000	2355	Foundation-Unrestricted	0.00	\$10,000
16170242	Unrestricted	Maintenance	5/5/2017	11000	2431	Instruction & General	0.00	\$0
16170243	Unrestricted	Increase	6/3/2017	83027	3281	Student Organizations	0.00	\$1,361
16170244	Unrestricted	Maintenance	5/5/2017	11000	1005	Instruction & General	0.00	\$0
16170245	Unrestricted	Increase	6/3/2017	83000	3221	Student Services Support	0.00	\$1,011
16170246	Unrestricted	Increase	6/3/2017	42428	3666	Consulate of Mexico in Albuquer	0.00	\$10,500
16170247	Unrestricted	Increase	6/3/2017	11302	1005	President's Discretionary	0.00	\$883
16170248	Unrestricted	Transfer	6/3/2017	11303	1020	Indirect Cost Funds	0.00	\$0
16170249	Restricted	Increase	6/3/2017	41460	2355	Northern New Mexico STEM	0.00	\$2,250
16170250	Unrestricted	Maintenance	5/5/2017	92536	2826	GO Bond 2014 Library Allocation	0.00	\$0
16170251	Unrestricted	Maintenance	5/5/2017	11012	2355	Department Discretionary	0.00	\$0
16170252	Restricted	Maintenance	5/5/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170253	Restricted	Maintenance	5/5/2017	41433	2263	LANS Chemistry	0.00	\$0
16170254	Restricted	Maintenance	5/5/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$0
16170255	Unrestricted	Maintenance	5/5/2017	11012	2355	Department Discretionary	0.00	\$0
16170256	Restricted	Decrease	6/3/2017	40109	2263	NIH BUILD	0.00	(\$1,194)
16170257	Restricted	Maintenance	5/5/2017	40110	2268	SWNRCT Program USDA	0.00	\$0
16170258	Unrestricted	Maintenance	5/5/2017	12105	3125	Athletics Administration	0.00	\$0
16170259	Unrestricted	Maintenance	5/5/2017	11801	3501	Internal Services	0.00	\$0
16170260	Restricted	Maintenance	5/8/2017	41211	2811	ABE State	0.00	\$0
16170261	Unrestricted	Maintenance	5/8/2017	11730	3421	Small Business Development Ctr	0.00	\$0
16170262	Restricted	Maintenance	5/8/2017	40112	2355	NSF INCLUDES	0.00	\$0
16170263	Restricted	Maintenance	5/8/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170264	Restricted	Maintenance	5/8/2017	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170265	Unrestricted	Maintenance	5/8/2017	11000	1007	Instruction & General	0.00	\$0

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170266	Unrestricted	Maintenance	5/19/2017	11000	2871	Instruction & General	0.00	\$0
16170267	Unrestricted	Maintenance	5/19/2017	11000	1080	Instruction & General	0.00	\$0
16170268	Restricted	Increase	7/14/2017	40106	2263	NM INBRE	0.00	\$83,478
16170269	Restricted	Maintenance	5/19/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$0
16170270	Restricted	Increase	7/14/2017	11012	2811	Department Discretionary	0.00	\$1,176
16170271	Restricted	Increase	7/14/2017	42428	3666	Consulate of Mexico in Albuquerque	0.00	\$4,500
16170272	Restricted	Maintenance	5/19/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170273	Unrestricted	Maintenance	5/19/2017	11801	3501	Internal Services	0.00	\$0
16170274	Unrestricted	Maintenance	6/6/2017	11801	3501	Internal Services	0.00	\$0
16170275	Unrestricted	Maintenance	6/6/2017	12105	3124	Athletics Administration	0.00	\$0
16170276	Restricted	Maintenance	6/6/2017	41452	4208	Kindle Project	0.00	\$0
16170277	Restricted	Increase	7/14/2017	41459	4208	NM Film Giveback Program	0.00	\$28,778
16170278	Unrestricted	Maintenance	6/6/2017	11801	3501	Internal Services	0.00	\$0
16170279	Unrestricted	Transfer	7/14/2017	12010	3741	El Rito Operations	0.00	\$0
16170280	Restricted	Maintenance	6/6/2017	41211	2811	ABE State	0.00	\$0
16170281	Restricted	Maintenance	6/6/2017	41101	2725	High School Equivalent Program	0.00	\$0
16170282	Restricted	Maintenance	6/6/2017	41458	2268	LANL Rio Arriba Internship Prog	0.00	\$0
16170283	Restricted	Maintenance	6/6/2017	41102	3052	College Assistance Migrant Progr	0.00	\$0
16170284	Restricted	Maintenance	6/6/2017	41211	2811	ABE State	0.00	(\$124)
16170285	Unrestricted	Maintenance	6/8/2017	11801	3501	Internal Services	0.00	\$0
16170286	Unrestricted	Maintenance	6/8/2017	11012	2212	Department Discretionary	0.00	\$0
16170287	Restricted	Maintenance	6/8/2017	40107	2355	Research Infrastructure Improve	0.00	(\$44)
16170288	Restricted	Maintenance	6/17/2017	41181	2811	ABE Federal	0.00	(\$1,690)
16170289	Restricted	Maintenance	6/14/2017	40106	2263	NM INBRE	0.00	\$0
16170290	Restricted	Maintenance	6/14/2017	41144	4201	Title III NRGSC-NNMC	0.00	\$0
16170291	Unrestricted	Maintenance	6/15/2017	11013	2653	Continuing Ed	0.00	\$0
16170292	Restricted	Decrease	7/14/2017	40107	2355	Research Infrastructure Improve	0.00	(\$5,417)
16170293	Restricted	Maintenance	6/28/2017	41193	2355	Carl Perkins - Vocational Services	0.00	\$0
16170294	Restricted	Maintenance	6/28/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$0
16170295	Unrestricted	Increase	7/14/2017	11012	1040	Department Discretionary	0.00	\$2,700

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
16170296	Unrestricted	Maintenance	7/25/2017	11000	4521	Instruction & General	0.00	\$0
16170297	Unrestricted	Maintenance	7/25/2017	11000	3731	Instruction & General	0.00	\$0
16170298	Restricted	Maintenance	7/25/2017	40112	2355	NSF INCLUDES	0.00	\$0
16170299	Unrestricted	Maintenance	7/25/2017	11012	1007	Department Discretionary	0.00	\$0
16170300	Restricted	Maintenance	7/25/2017	41118	2212	NSF-Noyce Scholarship Project	0.00	\$0
16170301	Restricted	Maintenance	7/25/2017	40104	2355	NSF DUE PEARL	0.00	\$0
16170302	Unrestricted	Maintenance	7/25/2017	11000	1010	Instruction & General	0.00	\$0
16170303	Restricted	Maintenance	7/25/2017	11730	3421	Small Business Development Ctr	0.00	\$0
16170304	Unrestricted	Maintenance	8/8/2017	11000	1080	Instruction & General	0.00	\$0
16170305	Unrestricted	Increase		11000	3731	Instruction & General	0.00	\$87,449
BAR Net Total							203.06	\$30,512,556

Northern New Mexico College

BAR Num 16170305
Thursday, August 03, 2017

FY17 (2016-2017)

Fund Type: Unrestricted

BAR Type: Increase

Fun Instruction & General				FTE	Amount
Org	I-G Revenue	Category	Account	Description	
Revenue	11000-4014-51041-600			Spring Tuition Resident	0.00 \$37,034
Revenue	12011-3731-58513-201			Cafereria Receipts	0.00 \$13,381
Revenue	12011-3731-80273-201			Transfer In	0.00 \$37,034
Total Revenue					0.00 \$87,449
Expense	11000-3731-80173-611			Transfer Out	0.00 \$37,034
Expense	12011-3731-61301-201			Professional Salaries-FT	0.00 (\$383)
Expense	12011-3731-61401-201			Support Staff Salaries-FT	0.00 \$2,142
Expense	12011-3731-61404-201			Overtime Pay	0.00 \$685
Expense	12011-3731-61505-201			Other Salaries - Temp	0.00 \$5,835
Expense	12011-3731-62111-201			Medicare	0.00 \$82
Expense	12011-3731-62112-201			FICA	0.00 \$351
Expense	12011-3731-62121-201			Retirement - ERA	0.00 \$651
Expense	12011-3731-62141-201			Retiree Health Care - ERA	0.00 \$79
Expense	12011-3731-62151-201			Health Insurance	0.00 \$171

Fun Food Service Espanola				
Org Cafeteria - Espanola				
Expense	12011-3731-62152-201	Dental Insurance	0.00	\$19
Expense	12011-3731-62153-201	Vision Insurance	0.00	\$4
Expense	12011-3731-62161-201	Basic Life	0.00	\$6
Expense	12011-3731-62181-201	Workers Compensation Insurance Bill	0.00	(\$33)
Expense	12011-3731-62190-201	Unemployment Compensation	0.00	\$78
Expense	12011-3731-71131-201	Supplies and Expense	0.00	(\$903)
Expense	12011-3731-71146-201	Licenses	0.00	\$99
Expense	12011-3731-71156-201	Merchandise for Resale	0.00	\$41,866
Expense	12011-3731-73102-201	Equipment up to 4999.99	0.00	(\$334)
Total Expense			0.00	\$87,449
BAR Net Total Increase			0.00	\$87,449

Vice President for Finance and Administration

NNMC Board of Regents Representative

**Northern New Mexico College
FY18 (2017-2018)**

Tuesday, August 08, 2017

BAR No.	Fund Type	BAR Type	Approved	Fund	Org	Fund Title	FTE	Amount
17180000	Combined	Approved Budget	7/1/2017	11000	1005	Instruction & General	204.86	\$23,919,552
17180001	Combined	Maintenance	7/25/2017	11000	2431	Instruction & General	0.00	(\$43,495)
17180002	Unrestricted	Maintenance	7/25/2017	11000	2263	Instruction & General	0.00	\$0
17180003	Unrestricted	Maintenance	7/25/2017	11000	2431	Instruction & General	0.00	\$0
17180004	Unrestricted	Maintenance	7/25/2017	11303	1020	Indirect Cost Funds	0.00	\$0
17180005	Unrestricted	Maintenance		11000	1007	Instruction & General	0.00	\$0
17180006	Restricted	Increase		41460	2355	Northern New Mexico STEM	0.00	\$7,080
17180007	Unrestricted	Increase		11012	1007	Department Discretionary	0.00	\$17,009
17180008	Restricted	Increase		41461	1007	LANS Investment 2017	0.00	\$60,000
BAR Net Total							204.86	\$23,946,846

Northern New Mexico College
FY18 (2017-2018)

BAR Num 17180006
Wednesday, August 02, 2017

Fund Type: Restricted
BAR Type: Increase

Fun Northern New Mexico STEM
Org Engineering

Category	Account	Description	FTE	Amount
Revenue	41460-2355-55005-606	Private Gifts and Grants	0.00	\$7,080
Total Revenue				\$7,080
Expense	41460-2355-71145-101	Purchased Services	0.00	\$7,080
Total Expense				\$7,080
BAR Net Total Increase				\$7,080

Vice President for Finance and Administration

NNMC Board of Regents Representative

Northern New Mexico College
FY18 (2017-2018)

BAR Num 17180007
Wednesday, August 02, 2017

Fund Type: Unrestricted
BAR Type: Increase

Fun Instruction & General
Org Maintenance - Espanola

Category	Account	Description	FTE	Amount
Revenue	11000-4521-80273-141	Transfer In	0.00	\$200
Revenue	11012-1007-58001-604	Other Revenue	0.00	(\$606)
Revenue	11012-1040-58001-604	Other Revenue	0.00	\$2,500
Revenue	11012-2114-58001-604	Other Revenue	0.00	\$76
Revenue	11012-2212-58001-604	Other Revenue	0.00	\$85
Revenue	11012-2263-58001-604	Other Revenue	0.00	\$108
Revenue	11012-2355-58001-604	Other Revenue	0.00	\$4,848
Revenue	11012-2431-58001-604	Other Revenue	0.00	\$34
Revenue	11012-2571-58001-604	Other Revenue	0.00	(\$246)
Revenue	11012-2811-58001-604	Other Revenue	0.00	\$9,727
Revenue	11012-3031-58001-604	Other Revenue	0.00	\$132
Revenue	11012-4011-58001-604	Other Revenue	0.00	\$151
Total Revenue			0.00	\$17,009
Expense	11000-4521-61404-141	Overtime Pay	0.00	\$200

**Fun Department Discretionary
Org Provost**

Expense	11012-1007-71123-131	Professional Development	0.00	(\$400)
Expense	11012-1007-71131-131	Supplies and Expense	0.00	(\$206)
Expense	11012-1040-71131-131	Supplies and Expense	0.00	\$1,150
Expense	11012-1040-71253-131	Honorariums	0.00	\$1,150
Expense	11012-1040-80173-131	Transfer Out	0.00	\$200
Expense	11012-2114-71131-101	Supplies and Expense	0.00	\$76
Expense	11012-2212-71131-101	Supplies and Expense	0.00	\$1
Expense	11012-2212-71142-101	Publications	0.00	\$52
Expense	11012-2212-72123-101	In-State Travel	0.00	\$32
Expense	11012-2263-62111-101	Medicare	0.00	\$5
Expense	11012-2263-62112-101	FICA	0.00	\$24
Expense	11012-2263-62181-101	Workers Compensation Insurance Bill	0.00	\$1
Expense	11012-2263-62190-101	Unemployment Compensation	0.00	\$11
Expense	11012-2263-71131-101	Supplies and Expense	0.00	\$67
Expense	11012-2355-61103-101	Faculty Salaries Adjunct	0.00	(\$1,500)
Expense	11012-2355-62181-101	Workers Compensation Insurance Bill	0.00	\$5
Expense	11012-2355-62190-101	Unemployment Compensation	0.00	(\$10)
Expense	11012-2355-71123-101	Professional Development	0.00	\$105

Fun Department Discretionary				
Org Engineering				
Expense	11012-2355-71131-101	Supplies and Expense	0.00	\$10,751
Expense	11012-2355-71145-101	Purchased Services	0.00	\$396
Expense	11012-2355-71149-101	Scholarship Expense	0.00	(\$2,250)
Expense	11012-2355-72123-101	In-State Travel	0.00	\$44
Expense	11012-2355-72124-101	Out-of-State Travel	0.00	(\$3,093)
Expense	11012-2355-73102-101	Equipment up to 4999.99	0.00	\$400
Expense	11012-2431-71131-101	Supplies and Expense	0.00	\$34
Expense	11012-2571-71131-101	Supplies and Expense	0.00	(\$246)
Expense	11012-2811-71131-122	Supplies and Expense	0.00	\$9,427
Expense	11012-2811-71136-122	Test and Testing Service	0.00	\$300
Expense	11012-3031-71131-123	Supplies and Expense	0.00	\$132
Expense	11012-4011-71131-132	Supplies and Expense	0.00	\$151
Total Expense			0.00	\$17,009

Fun Department Discretionary
Org Business Office

BAR Net Total Increase

0.00 \$17,009

Vice President for Finance and Administration

NNMC Board of Regents Representative

Northern New Mexico College
FY18 (2017-2018)

BAR Num 17180008
Tuesday, August 08, 2017

Fund Type: Restricted
BAR Type: Increase

Fun LANS Investment 2017

Org President

Category	Account	Description	FTE	Amount
Revenue	41461-1005-55005-606	Private Gifts and Grants	0.00	\$10,000
Revenue	41461-1007-55005-606	Private Gifts and Grants	0.00	\$16,000
Revenue	41461-2052-55005-606	Private Gifts and Grants	0.00	\$4,000
Revenue	41461-2114-55005-606	Private Gifts and Grants	0.00	\$5,000
Revenue	41461-4522-55005-606	Private Gifts and Grants	0.00	\$25,000
Total Revenue			0.00	\$60,000
Expense	41461-1005-71131-131	Supplies and Expense	0.00	\$10,000
Expense	41461-1007-73105-131	Computer-Electr. 5000.00 and Over	0.00	\$16,000
Expense	41461-2052-71131-101	Supplies and Expense	0.00	\$4,000
Expense	41461-2114-71131-101	Supplies and Expense	0.00	\$5,000
Expense	41461-4522-71131-141	Supplies and Expense	0.00	\$25,000
Total Expense			0.00	\$60,000

Fun LANS Investment 2017
Org Maintenance - El Rito

BAR Net Total Increase	0.00	\$60,000
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Vice President for Finance and Administration
NNMC Board of Regents Representative

High School Equivalency Program (HEP)

Annual Profile 2015-16

Grantee: Northern New Mexico College					
PR: S141A150012	Project Type: Commuter	Release Date: July 31, 2017	GPRA1	96%	
Reporting Period: 7/1/15-6/30/16, Year 1	Enrollment Type: Structured	Data Source: APR 2016	GPRA2	96%	
Project Size: Small			Federal Award	\$448,530	

The purpose of this report is to provide a “snapshot” of HEP grantee’s basic information, performance measures, and funding data to the stakeholders.

Notes for Interpretations:

These simple statements are meant to serve as an aid to interpret the graphs and do not substitute for the definitions that are found in the APR.

Cost Average or Count Average: The mean of expenditure or mean student count for all the grantees in a respective category.

Cost per Served: The Recommended Amount (Federal Award) for the 12-month budget period divided by No. Served.

Efficiency: The average cost per HSE Attainer. The Recommended Amount (Federal Award) for the 12-month budget period divided by the number of HSE Attainers.

Enrollment Type: A project that serves students that enter on a year-round basis and may enter/exit the program at any time is *Open*. A project that serves students on a set schedule for enrollment purposes is *structured*.

GPRA1: The proportion (percent) of HSE Attainers relative to No. Funded or No. Served (whichever is higher) while adjusting for Persisters.

GPRA2: The proportion (percent) of HSE Attainers who enter postsecondary education or training, upgraded employment, or the military, relative to HSE Attainers.

GPRA Average: The *weighted* average of GPRA of all the grantees (all cohorts). The average is *weighted* based on each project’s student count (i.e., No. Funded or No. Served, whichever is higher).

HSE Attainers: Students who attain their high school equivalency diploma (HSE graduates).

National GPRA Results: The *weighted* average of GPRA excluding the first year grantees (i.e., Year 2-Year 5). The average is weighted based on each project’s student count, i.e., No. Funded or No. Served, whichever is higher.

National GPRA Targets: These are the HEP OME-approved annual goals.

No. Funded: The number of students funded to be served from the approved application.

No. Served: The number of students served by a HEP grantee within the Budget Period.

Persisters: Students who do not attain HSE within a single reporting period (12-month budget period), and they continue to be served in the subsequent Budget Period.

Project Size: A project that serves at least 125 students is *Large*. A project that serves less than 125 students is *small*.

Reporting Period or Budget Period: The 12-month period that is found in Block 6 of the Grant Award Notification.

Withdrawals: Students who are served but do not meet the requirements as HEP HSE Attainers or Persisters.

High School Equivalency Program (HEP) Annual Profile 2015-2016 Northern New Mexico College, PR No. # S141A150012

Figure 1. Grantee GPRAs, Group Averages and National Targets

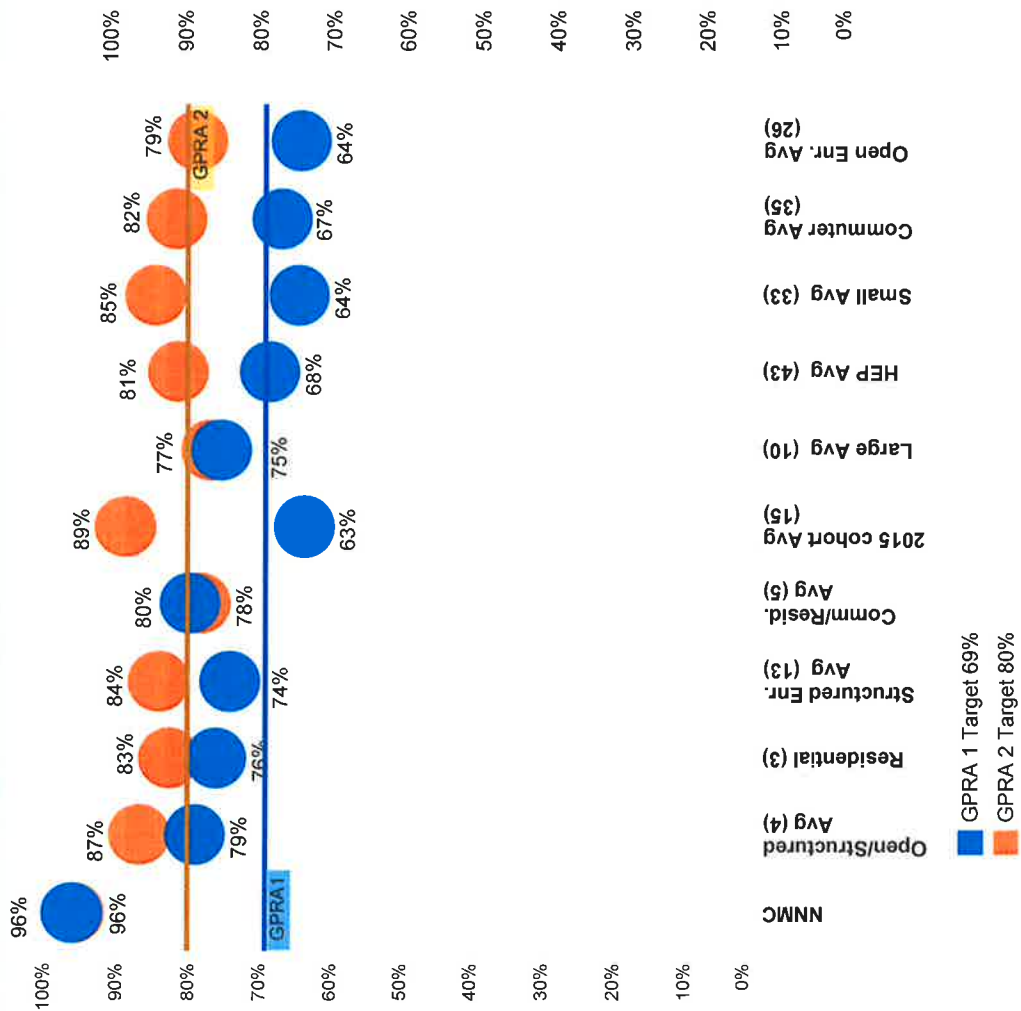
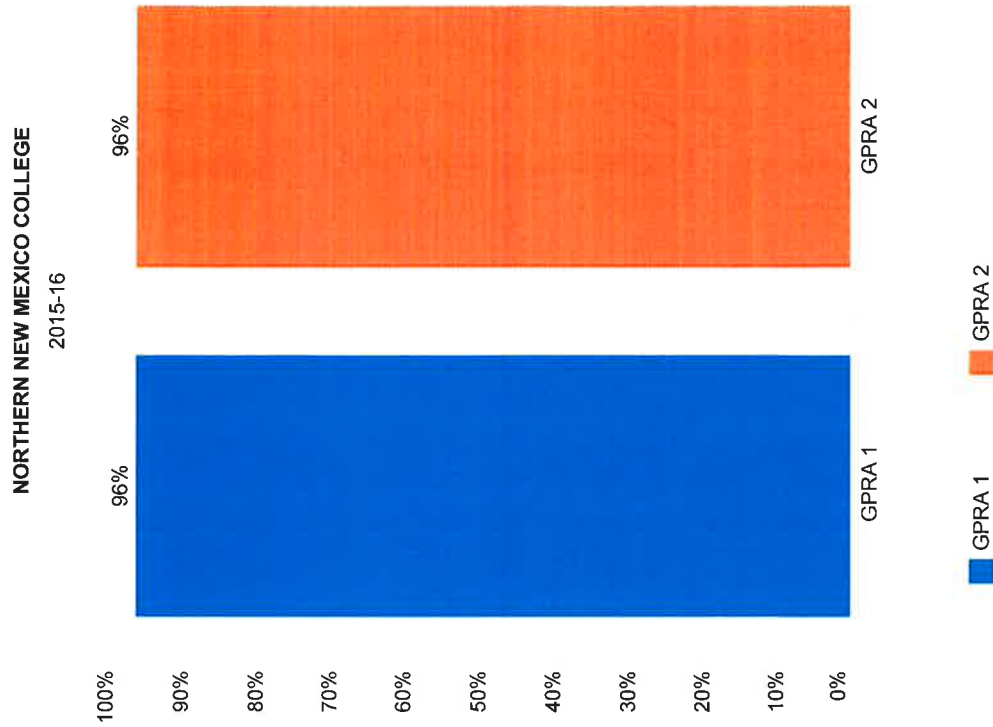


Figure 2. Grantee GPRAs and National Targets



Northern New Mexico College

Figure 3. Grantee Project Student Counts and Group Average Counts

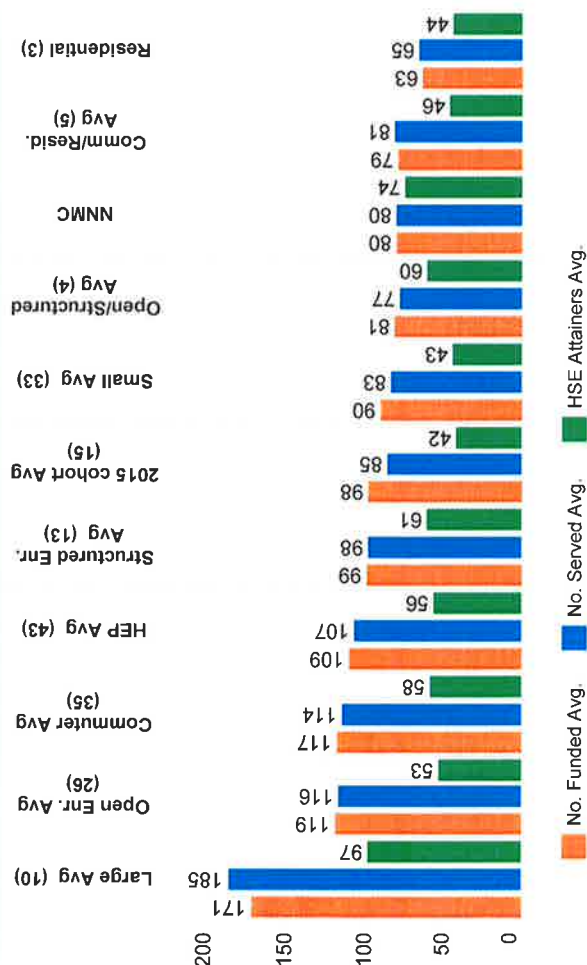


Figure 4. Grantee No. Funded and No. Served

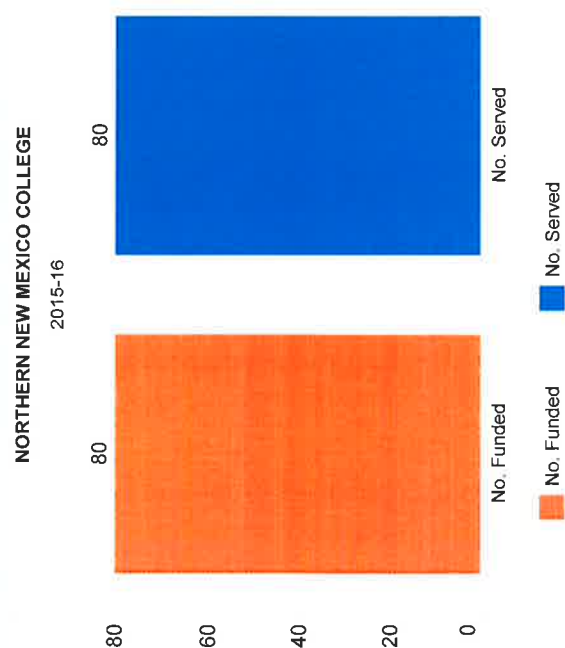


Figure 5. Grantee Cost Per HSED Attainer and Group Average Efficiencies

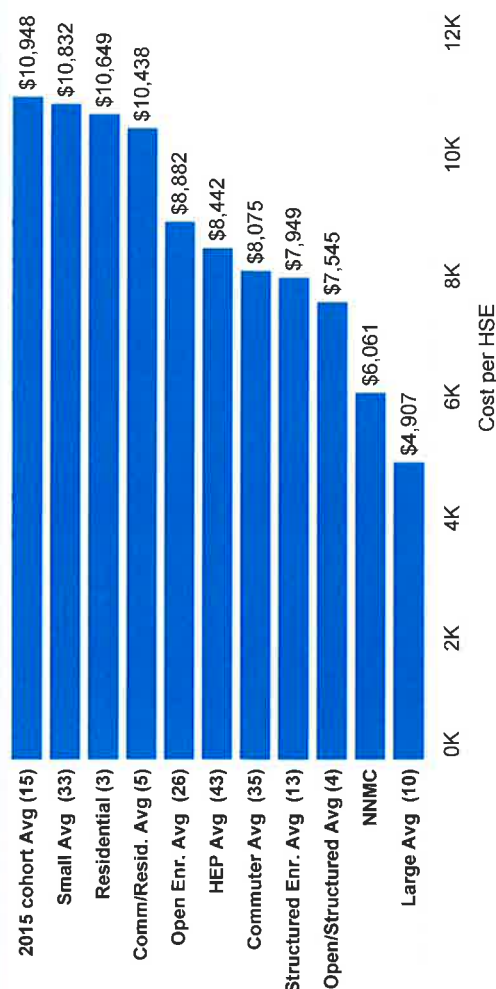


Figure 6. Grantee Cost Per HSED Attainer and Attainer That is Placed

