NOTICE
The Board of Regents of New Mexico State University will hold a special meeting on Friday, June 29, 2018 at 9:00am in the Regents Room of the Educational Services Building, NMSU Las Cruces Campus, Las Cruces, New Mexico. In compliance with the Open Meetings Act, copies of this agenda will be made available at NMSU’s Zuhl Library at least 72 hours prior to the meeting and is accessible on the public university website at https://regents.nmsu.edu/regent-meetings/ Please contact the Office of the Board of Regents at 575-646-5997 for additional information.

Regents of New Mexico State University
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela

Non-Voting Advisory Members - Faculty Senate Chair Becky Corran, Employee Council Chair Monica Dunivan, ASNMSU President Emerson Morrow

University Officials - Chancellor Dan Arvizu, Ph.D., Executive Vice President and Provost Daniel Howard, Ph.D., Senior Vice President Andrew Burke, Ed.D., General Counsel Lizbeth Ellis, J.D.

AGENDA
The Board of Regents meeting will be available by webcast through the link at http://panopto.nmsu.edu/bor/

A. Call to Order, Chair Debra Hicks
   1. Confirmation of Quorum
   2. Approval of the Agenda

B. Approval of the Minutes, Chair Debra Hicks
   1. Special Work Session Meeting of March 6, 2018
   2. Regular Meeting of March 6, 2018
   3. Special Meeting of April 6, 2018
   4. Special Meeting of April 9, 2018
   5. Regular Meeting of May 11, 2018
   6. Special Meeting of May 22, 2018
   7. Special Meeting of May 25, 2018

C. Consent Items, Chair Debra Hicks
   1. Operating Agreements for the Community Colleges, General Counsel Liz Ellis
   2. Revision to RPM 15.65, Security Clearance (Department of Defense), General Counsel Liz Ellis
   3. Revision to RPM 1.10, NMSU System Policies and Procedures, General Counsel Liz Ellis
   4. NMSU-Las Cruces – Local Government Road Fund (LGRF) Resolution, AVP Glen Haubold, Executive Director Alton Looney
D. **Action Items, Chair Debra Hicks**  
   1. Quitclaim Deed for Property Transfer on Wisconsin Avenue, Special Asst. Scott Eschenbrenner

E. **Informational Items, Chair Debra Hicks**

F. **Announcements, Chair Debra Hicks**  
   1. Upcoming Board of Regents Meetings  
      BOR Regular Meeting - Strategic Planning Retreat – August 2018 TBD

G. **Adjournment, Chair Debra Hicks**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Board of Regents Office at 575-646-5997 at least three days prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, may also be provided in various accessible formats. Please contact the Office of the Regents Chief Advisor at (575) 646-5997 if a summary or other type of accessible format is needed.
Consent Items:

Agenda Item # C-1 Operating Agreements for the Community Colleges
Presented by: Liz Ellis, General Counsel
Requested Action: Approval of Revised Operating Agreements for the Community Colleges
Synopsis: The terms of the Operating Agreement between the Board of Regents and the Advisory Board of each community college were revisited as required by statute. This year, an attempt was made to streamline the agreements for uniformity and brevity. The material deleted will be used to draft rules to govern the day to day operations.

Agenda Item # C-2 Revision to RPM 15.65, Security Clearance (Department of Defense)
Presented by: Liz Ellis, General Counsel
Requested Action: Approval of Proposed Revised RPM 15.65, Security Clearance (Department of Defense)
Synopsis: This revision will add the position of president of the Las Cruces campus to the list of authorized key management personnel, for purposes of access to classified information. This policy is administered by the NMSU Facility Security Officer, Chris J. Scott from PSL Security Safety Services.

Agenda Item # C-3 Proposed Revised RPM 1.10, NMSU System Policies and Procedures
Presented by: Liz Ellis, General Counsel
Requested Action: Approval of Revision to RPM 1.10, NMSU System Policies and Procedures
Synopsis: This revision reformats and clarifies RPM 1.10. These changes coincide with an update to ARP 1.10 which aligned the current practice with the written policy and rule which pre-dated the current web-based policy system. It also clarifies that the rules in the ARP (Administrative Rules and Procedures) have the same force and effect as policies approved by the Regents, provided they are not in conflict.
Agenda Item Summary

Meeting Date: June 29, 2018
Office Submitting: Administration and Finance

Consent Items:

Agenda Item # C-4  NMSU-Las Cruces—Local Government Road Fund (LGRF) Resolution
Presented by: Associate Vice President Glen Haubold;
Executive Director Alton Looney
Requested Action: Approval of a resolution for NMDOT and a road improvement project.
Synopsis: This project will repave Espina Road between University Avenue and South Horseshoe Street.
Board of Regents Agenda Item Summary

Meeting Date: June 29, 2018
Office Submitting: Chancellor’s Office

Consent Items:

Action Items:

Agenda Item # D-1 Quitclaim Deed for Property Transfer on Wisconsin Avenue

Presented by: Scott Eschenbrenner, Special Assistant to the President

Requested Action: Approval of Quitclaim Deed, Right of Repurchase Agreement, and Assignment of Ground Lease to transfer 0.6894 acre tract of land located at the corner of South Locust Street and Wisconsin Avenue (Aggie Car Wash) and a 1.0616 acre tract of land located at 1815 E. Wisconsin Avenue (Kids Kountry Day Care), Las Cruces, Dona Ana County, New Mexico to the New Mexico State University Foundation, Inc (NMSU-F). Provided there are no material changes to the Purchase Agreement, Real Estate Committee is requesting the Board of Regents grant authority to the Chancellor to execute closing documents. Any material changes to the Purchase Agreement will come back to the Board of Regents for approval prior to closing.

Synopsis: The Regents of New Mexico State University (NMSU) and NMSU-F have entered into a Real Estate Purchase and Sale Agreement to transfer the above referenced real estate for $680,000. This transfer will come with a separate Right of Repurchase Agreement, Assignment of Ground Lease (Aggie Car Wash) and Quitclaim Deed conveying both parcels to the NMSU-F. The Board of Regents Real Estate Committee recommends approval and that the proceeds be set aside for future development activities in Aggie Uptown.
Regents of New Mexico State University  
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela

MINUTES

Chair Hicks called the meeting to order at 1:20pm, noting this meeting is a work session only. No votes or other official actions are to be taken. Chair Hicks introduced new Regent Chris Saucedo. He provided his background and interest in serving as a regent.

A. Athletics Subcommittee Report
   Subcommittee Chair Mickey Clute discussed the work of the subcommittee, highlighted segments of a recent progress report, and discussed opportunities to leverage recent prominent athletic success.

B. San Luis Potosí LOI
   Provost Howard discussed an opportunity to open a campus in San Luis Potosí, Mexico.

C. Strategic Hires
   Chair Hicks briefly discussed the importance of NMSU’s new administration being provided an opportunity to make key strategic hires.

D. Stan Fulton Legacy
   Chancellor Carruthers briefly discussed the Stan Fulton estate.

Chair Hicks adjourned the meeting at 3:20pm.

Meeting Minutes Approved on June 29, 2018 by the New Mexico State University Board of Regents.

________________________________ __________________________________
Debra P. Hicks Jerean C. Hutchinson
Board of Regents Chair Board of Regents Secretary/Treasurer
A. Call to Order

Chair Hicks called the meeting to order at 3:43pm.

1. Introductions

   Introduction of the Media, Associate Vice President Justin Bannister
   Associate Vice President Bannister introduced several members of the media.

   Introduction of Officials
   - Newly appointed Regent Chris Saucedo, Chair Debra Hicks
   Chair Hicks introduced new member of the Board of Regents Chris Saucedo. Regent Saucedo spoke of his
   roots in the Mesilla Valley and his pleasure in returning to serve the institution as regent.
   - Employee Council Chair Monica Dunivan, Chancellor Garrey Carruthers, Ph.D. and Adam Cavotta
   Chancellor Carruthers introduced incoming Employee Council Chair Monica Dunivan.
   - Faculty Senate Chair-Elect Becky Corran, Provost Dan Howard, Ph.D. and Christopher Brown, Ph.D.
   Provost Daniel Howard introduced Faculty Senate Chair-Elect Becky Corran.

2. Confirmation of Quorum, Chair Debra Hicks

   All members of the Board were present: Hicks, Hutchinson, Mitchell, Saucedo and Vela.

3. Approval of the Agenda, Chair Debra Hicks

   Regent Mitchell made a motion to approve the agenda with movement of agenda item G-2 Athletics
   Subcommittee Report to immediately follow public comment. Motion seconded and passed unanimously
   (Hicks, Hutchinson, Mitchell, Saucedo, Vela).

4. Public Comment, Associate Vice President Justin Bannister

   20 individuals provided public comment: Christopher Brown, Michele Nishiguchi, Anne Hubbell, Bernd
   Leinauer, Julie Steinkopf, Brook Milligan, Margaret Malamud, James Coburn, Jon Hunner, Neil Harvey, Gary
   Roemer, Monique Martinez, Stu Munson-McGee, John Sandstrom, James McAteer, Stephen Lopez, Martha
   Desmond, Gary Rayson, Spencer Herrera, and Chris Hatch.

Regent Mitchell stressed the goal of investing in revenue generating opportunities for Athletics to reduce dependency on Instruction and General (I&G) funds. Subcommittee Chair Mickey Clute shared the charge of the committee to leverage recent and nationally prominent successes for greater and long standing athletic success. An investment in athletics now might gain a sizable return on that investment. There are concerns regarding retention of coaches, salaries, summer school costs and recruiting. Multiple options were presented in the report to increase the budget including I&G investment, debt forgiveness and debt payment extension. In addition, investments in athletics marketing, private fund generation, and alumni support were included in the report. Finally, opportunities to enhance the game experience and profit from concessions were examined.

Regent Mitchell made a motion to extend the athletics debt for an additional five years, with an immediate $250,000-$300,000 investment this fiscal year, preliminary metrics to measure effectiveness, annual progress report, and a three year evaluation of metrics. A letter will be submitted by Chancellor Carruthers and Chair Hicks to the Secretary of the Higher Education Department. Regular periodic review of athletics will continue to occur. The motion was seconded and passed unanimously (Hicks, Hutchinson, Mitchell, Saucedo, Vela). The Athletics Subcommittee will continue to examine long term opportunities.

B. Approval of the Minutes, Chair Debra Hicks

1. Special Meeting of February 12, 2018 @ 1:00pm
   Regent Hutchinson moved approval of the minutes, motion seconded and motion approved (4-0). (Hicks, Hutchinson, Mitchell, Vela). Regent Saucedo abstained.

2. Confirmation of Prior Executive Session of March 6, 2018 @ 12:00pm
   Regent Hicks-yes, Regent Hutchinson-yes, Regent Saucedo, Regent Vela-yes.
   Regent Mitchell-yes (confirmed later in the meeting as she had momentarily stepped out earlier).

3. Confirmation of Prior Executive Session of March 6, 2018 @ 2:00pm
   Regent Hicks-yes, Regent Hutchinson-yes, Regent Saucedo, Regent Vela-yes.
   Regent Mitchell-yes (confirmed later in the meeting as she had momentarily stepped out earlier).

C. Awards and Recognitions, Chair Debra Hicks

1. Athletics Awards, Athletics Director Mario Moccia
   Athletics Director Moccia recognized the regular season champion volleyball team and coach of the year Mike Jordan and the Arizona Bowl Champion football team.

D. Committee Reports - DEFERRED

1. Audit and Risk Committee Report, Chair Debra Hicks
2. Real Estate Committee Report, Chair Debra Hicks
3. Financial Strategies, Performance and Budget Committee Report, Chair Kari Mitchell
4. Student Success Committee Report, Chair Jerean Hutchinson

E. Recurring Reports - DEFERRED

1. NMSU Faculty Senate Report, Chair Christopher Brown, Ph.D.
2. Associated Students of NMSU Report, President Kevin Prieto
3. NMSU Employee Council Report, Chair Monica Dunivan
4. Higher Education Regents Coalition Report, BOR Chair Debra Hicks
5. Aggie Development Inc. Report, President & CEO Scott Eschenbrenner
6. NMSU Foundation Report, President Andrea Tawney, Ph.D.
7. Arrowhead Center Inc. Report, Chair Kevin Boberg, Ph.D.
F. Consent Items, Chair Debra Hicks

Following consideration of item G-1, the Board considered the consent agenda. Regent Mitchell moved to approve the consent agenda. Motion was seconded and motion passed unanimously (Hicks, Hutchinson, Mitchell, Saucedo and Vela).

1. Temporary Investments Report for the Quarter ended December 31, 2017, Senior VP Andrew Burke, Ed.D.
2. Disposition/Deletion of Property, Senior Vice President Andrew Burke, Ed.D.
3. FY18 Parking Lot Funding, Associate VP Glen Haubold, University Architect Heather Watenpaugh
4. Engineering Complex III-Ed and Harold Foreman Engineering Complex, Suite 300 Renovation, Associate VP Glen Haubold, University Architect Heather Watenpaugh
5. Honorary Degree Recipient Nominees, Vice President Andrea Tawney, Ph.D.
6. New Art Building Naming, Vice President Andrea Tawney, Ph.D.
7. Spaces in the New Art Building Namings, Vice President Andrea Tawney, Ph.D.
8. Mass Spectrometry Laboratory, Gardiner Hall Naming, Vice President Andrea Tawney, Ph.D.
9. TECH Lab, O'Donnell Hall Naming, Vice President Andrea Tawney, Ph.D.
10. McFie Circle Desert Landscape Garden Naming, Vice President Andrea Tawney, Ph.D.
11. Dona Ana Community College (DACC) – Hatch Learning Center
Scott Eschenbrenner, Special Assistant to the President
12. RPM 2.10, Non-Academic Units, Creating, Reorganizing, Relocating, Eliminating - Repeal
General Counsel Lizbeth Ellis, J.D.
13. RPM 6.35, Mandatory Employee Training; Opportunities for Professional Development - Repeal
General Counsel Lizbeth Ellis, J.D.
14. RPM 16.60, Responsible Alcohol Use – Revision, General Counsel Lizbeth Ellis, J.D.
15. RPM 18.80, Tailgating Activities – Repeal, General Counsel Lizbeth Ellis, J.D.
16. 2018 Annual Open Meetings Notice Resolution, General Counsel Lizbeth Ellis, J.D.
17. Access to Classified Information Resolution, NMSU Facility Security Officer Chris Scott
18. Cooperative Educational Services’ Restated and Amended Joint Powers Agreement (Amendment 9),
General Counsel Lizbeth Ellis, J.D.
19. New Justice, Political Philosophy and Law (JPPL) Major within Philosophy at NMSU-Las Cruces
Provost Daniel Howard, Ph.D.; Associate Dean Beth Pollack, Ph.D.; Professor Mark Walker, Ph.D.
20. New Associate of Applied Science in Game Development Program at NMSU-DACC
President Renay Scott
21. Closure of Electrical Apprenticeship Program at NMSU-DACC, President Renay Scott
22. **Closure of Library Science Program at NMSU-DACC, President Renay Scott**

23. **Closure of Paralegal Studies Program at NMSU-DACC, President Renay Scott**

G. **Action Items, Chair Debra Hicks**

1. **Letter of Intent with El Grupo Promotor for Development and Operation of NMSU Campus in San Luis Potosi, Mexico, Chancellor Garrey Carruthers, Ph.D. and Executive VP and Provost Daniel Howard, Ph.D.**

   Provost Dan Howard shared an opportunity for NMSU to consider a branch campus in San Luis Potosi, Mexico and highlighted potential faculty and student exchanges.

   Regent Mitchell made a motion to support a Letter of Intent to examine the viability of a branch campus. The motion was seconded and motion passed unanimously.

2. **Athletics Subcommittee Report, Regent Kari Mitchell MOVED BELOW ITEM A-4 ABOVE**

3. **Election of Officers, Chair Debra Hicks**

   Regent Mitchell moved Debra Hicks serve as Chair of the Board of Regents, motion seconded, and motion approved 4-0 (Regents Hutchinson, Mitchell, Saucedo, Vela). Regent Hicks abstained.

   Regent Hutchinson moved Kari Mitchell serve as Vice Chair of the Board of Regents, motion seconded, and motion approved 4-0 (Regents Hicks, Hutchinson, Saucedo, Vela). Regent Mitchell abstained.

   Regent Mitchell moved Jerean Hutchinson serve as Secretary Treasurer of the Board of Regents, motion seconded, and motion approved (Regents Hicks, Hutchinson, Mitchell, Saucedo, Vela).

H. **Informational Items, Chair**

1. **Chancellor’s Report, Chancellor Garrey Carruthers, Ph.D.**

   Chancellor Carruthers provided a brief update on applications, admitted students and scholarship awards.

2. **Provost’s Report, Executive Vice President and Provost Daniel Howard, Ph.D.**

   Provost Howard heralded the Higher Learning Commission’s Reaffirmation of NMSU’s Accreditation and commended the team, including Dr. Shelly Stovall, Dr. Chris Brown, Dr. Stuart Munson-McGee, Dr. Kevin Boberg, Dr. Luis Vazquez, Dr. David Smith, Dr. Kathy Brook and Dr. Bernadette Montoya.

3. **Summary of Revisions to the Administrative Rules and Procedures of NMSU (ARP) for the period 11/15/17 through 02/13/18, General Counsel Lizbeth Ellis, J.D.**

   General Counsel Liz Ellis provided a brief summary of the revisions.

4. **Appointments to Committees and Bodies, Chair Debra Hicks**

   Chair Hicks made the following appointments:
   - Regents Financial Strategies, Performance and Budget Committee – Regent Mitchell and Regent Saucedo
   - Regents Student Success Committee – Regent Hutchinson and Regent Mitchell
   - Regents Audit and Risk Committee – Regent Hicks and Regent Saucedo
   - Regents Real Estate Committee – Regent Hicks and Regent Vela
   - Foundation Board – Regent Hutchinson
   - Arrowhead Board – Regent Hicks and Regent Vela
   - San Luis Potosi Due Diligence – Regent Hicks
Honorary Degree – Regent Vela and Regent Hutchinson
Other committee members are to remain as previously appointed.

5. **Search Committee Update, Regent Kari Mitchell**
Search Committee met. Approximately 300 have expressed interest, with 50 being viable. Through multiple iterations, the list has been winnowed to 10 candidates for skype interviews. Wheless Partners has expressed excitement at the level of candidate quality. The search planning subcommittee will be very engaged in hosting the candidates.

Chair Hicks participated in a conference call with the Higher Learning Commission and acknowledged appropriate controls remain in place.

I. **Announcements, Chair**
1. **“Gun’s Up” – Good News for NMSU!**
   Brief comments were provided highlighting good news at NMSU.
2. **Upcoming Board of Regents Meetings**
   - April 6, 2018 Special Meeting
   - May 11, 2018 Regular Meeting

J. **Adjournment, Chair**
Regent Mitchell moved adjournment and the meeting was adjourned at 5:47pm.

Meeting Minutes Approved on June 29, 2018 by the New Mexico State University Board of Regents.

_________________________________________  _______________________________________
Debra P. Hicks                        Jerean C. Hutchinson
Board of Regents Chair              Board of Regents Secretary/Treasurer
Regents of New Mexico State University  
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela

Non-Voting Advisory Members - Faculty Senate Chair Becky Corran, Employee Council Chair Monica Dunivan, ASNMSU President Emerson Morrow

University Officials - Chancellor Garrey Carruthers, Ph.D., Executive Vice President and Provost Daniel Howard, Ph.D., Senior Vice President Andrew Burke, Ed.D., General Counsel Lizbeth Ellis, J.D.

MINUTES

The Board of Regents meeting is available by webcast through the link at http://panopto.nmsu.edu/bor/

A. Call to Order - Chair Debra Hicks called the meeting to order at 4:09pm.

1. Confirmation of Quorum, Chair Debra Hicks
   A quorum of members was confirmed, with Regent Hicks, Regent Mitchell and Regent Vela attending in person and Regent Saucedo attending by GoToMeeting technology. Regent Hutchinson was absent due to a death in the family.

2. Introduction of President Designate John Floros, Chair Debra Hicks
   Incoming President Floros was not present. Dr. Floros was introduced earlier in the day at a public welcoming event in conjunction with Dr. Arvizu.

3. Approval of the Agenda, Chair Debra Hicks
   Regent Mitchell made a motion to approve the agenda, motion seconded, and motion passed unanimously 4-0 (Hicks, Mitchell, Saucedo, Vela).

B. Approval of the Minutes, Chair Debra Hicks

1. Confirmation of Prior Executive Session of May 22, 2018
   Regents confirmed compliance with the Open Meetings Act by roll call. Regent Hicks-yes, Regent Mitchell-yes, Regent Saucedo-yes, Regent Vela-yes. Regent Hutchinson-not present.

C. Consent Items, Chair Debra Hicks

Regent Mitchell made a motion to approve the consent agenda, motion seconded, and motion passed unanimously 4-0 (Hicks, Mitchell, Saucedo, Vela).

1. Employment Agreement with Dr. Dan Arvizu to Serve as NMSU System Chancellor
2. Transfer of Duties of and Authority Granted to the Chancellor under the Regents Policy Manual

D. Informational Items, Chair Debra Hicks

1. Transition Plans

Regent Mitchell summarized the elements of the chancellor and president employment agreements. These agreements will be shared publicly. The base salary for the chancellor is $500,000 annually and $450,000 for the president. Chancellor Arvizu began employment on May 21 and assumes the role and
full authority of system chancellor on June 1, 2018. President Floros assumes the role of president on July 1, 2018.

NMSU finds itself in a challenging place. Approximately $20 million in lost annual revenue has occurred, including the loss of over 800 jobs. It is imperative NMSU realize a turnaround. Therefore, these employment agreements include incentives based on the achievement of performance metrics. The cycle of performance evaluation will revolve around an annual late September date dependent on fall performance targets. Success among these student metrics will be realized through the work of faculty and staff. A complementary incentive plan for faculty and staff will be developed.

E. **Announcements, Chair Debra Hicks**
   1. **Upcoming Board of Regents Meetings**
      BOR Regular Meeting - Strategic Planning Retreat – August 2018 TBD

F. **Adjournment, Chair Debra Hicks**
Regent Vela moved adjournment. The meeting was adjourned at 4:37pm.

Meeting Minutes Approved on June 29, 2018 by the New Mexico State University Board of Regents.

____________________________________  __________________________________
Debra P. Hicks                Jerean C. Hutchinson
Board of Regents Chair        Board of Regents Secretary/Treasurer
NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING May 25, 2018 at 4:00pm
Regents Room of the Educational Services Building, Las Cruces Campus
1780 East University Avenue, Las Cruces, New Mexico

Regents of New Mexico State University
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela
Non-Voting Advisory Members - Faculty Senate Chair Becky Corran, Employee Council Chair Monica Dunivan, ASNMSU President Emerson Morrow
University Officials - Chancellor Garrey Carruthers, Ph.D., Executive Vice President and Provost Daniel Howard, Ph.D., Senior Vice President Andrew Burke, Ed.D., General Counsel Lizbeth Ellis, J.D.

MINUTES
The Board of Regents meeting is available by webcast through the link at http://panopto.nmsu.edu/bor/

A. Call to Order - Chair Debra Hicks called the meeting to order at 3:59pm.
   1. Confirmation of Quorum, Chair Debra Hicks
      A quorum of members was confirmed, with Regent Hicks and Regent Saucedo attending remotely and Regent Hutchinson, Regent Mitchell and Regent Vela attending in person.
   2. Approval of the Agenda, Chair Debra Hicks
      Regent Hutchinson made a motion to approve the agenda, motion seconded, and motion passed unanimously 5-0 (Hicks, Hutchinson, Mitchell, Saucedo, Vela).

B. Consent Items, Chair Debra Hicks
   1. Employment Agreement with Dr. John Floros to Serve as NMSU President
      Regent Hutchinson made a motion to approve the consent agenda, motion seconded, and motion passed unanimously 5-0 (Hicks, Hutchinson, Mitchell, Saucedo, Vela).

C. Informational Items, Chair Debra Hicks
   Regent Mitchell reiterated the terms of incoming President Floros’ contract including a base salary of $450,000 and incentives based on the realization of defined and significant performance which were shared in the board meeting of May 22, 2018.

D. Announcements, Chair Debra Hicks
   1. Upcoming Board of Regents Meetings
      BOR Regular Meeting - Strategic Planning Retreat – August 2018 TBD

E. Adjournment, Chair Debra Hicks
   Regent Vela moved adjournment. The meeting was adjourned at 4:08pm.

Meeting Minutes Approved on June 29, 2018 by the New Mexico State University Board of Regents.

__________________________________________________________
Debra P. Hicks                                             Jerean C. Hutchinson
Board of Regents Chair                                    Board of Regents Secretary/Treasurer

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Board of Regents Meeting
Meeting Date:
Agenda Item Cover Page

Presented By: Liz Ellis, General Counsel

☐ Action Item
☒ Consent Item
☐ Informational Item

Agenda Item: Operating Agreements for the Community Colleges

Requested Action of the Board of Regents: Approval of Revised Operating Agreements between the Board of Regents and the Advisory Boards of the Community Colleges

Executive Summary: The terms of the Operating Agreement between the Board of Regents and the Advisory Board of each community college were revisited as required by statute. This year, an attempt was made to streamline the agreements for uniformity and brevity. The material deleted will be used to draft rules to govern the day to day operations.

References: NMSA 1978, § 21-14-2(B) (1978)

Prior Approvals: Presidents of each Community College; the approvals are pending with the Advisory Board of each Community College.

Agenda Item Approved By:

[Signature]
Liz Ellis, General Counsel
NMSU General Counsel

Date: 6/28/18
AGREEMENT
PERTAINING TO THE OPERATION OF THE
ALAMOGORDO COMMUNITY COLLEGE

BETWEEN

THE REGENTS OF NEW MEXICO STATE UNIVERSITY

AND

THE ADVISORY BOARD OF

ALAMOGORDO COMMUNITY COLLEGE
Agreement
Pertaining to the Operation of the Alamogordo Community College

The Regents of New Mexico State University (Regents), the parent university of the Alamogordo Community College (the Community College), and the branch community college board (Advisory Board) hereby enter into the following agreement concerning the operation of the Community College (the Operating Agreement).

This Operating Agreement is adopted in accordance with the requirements of state law and founded on the desire of the parties to provide quality educational services must be provided in accordance with the needs of the Community College service area.

Article 1
Advisory Board

A. Advisory Board Defined

The Advisory Board consists of the local school board, or the combined local school boards, acting as a single board, situated within the local taxing district which supports the Community College. [N.M. Stat § 21-14-2(A) (1978)]

B. Multiple School District Boards

For Community Colleges located in counties with more than one local school district, the Advisory Board may designate a committee to act on its behalf (Advisory Committee). The Advisory Committee will consist of two representative board members from each local school board. The Advisory Board may delegate to the Advisory Committee all functions and responsibilities of the Advisory Board, except that the Advisory Board may not delegate its duty to certify tax levies or elections for tax levies.

C. Duties of the Advisory Board

Pursuant to state law, the duties of the Advisory Board are as follows:

1. Enter into a written agreement with the Regents, subject to biennial review by the parties and to the review and commentary of the commission on higher education;
2. Act in an advisory capacity to the Regents in all matters relating to the conduct of the Community College;
3. Approve the annual operating budget of Community College for recommendation to the Regents;
4. Certify to the board of county commissioners the tax levy; and
5. Conduct the election for tax levies for the Community College. [N.M. Stat § 21-14-2(B) (1978)]
D. Advisory Board Meetings

The Advisory Board will meet as necessary to: (2) certify to the board of county commissioners the tax levy; and (3) conduct the election for tax levies for the Community College.

In addition, the Advisory Board, or the Advisory Committee if one has been formed, will review the annual operating budget of Community College for recommendation to the Regents, and, upon request of either party, will meet, at least once a year, with the Regents. The purpose of the joint meeting is to allow each of the parties to report to the other and make inquiry of the other on all matters relating to the conduct of the Community College.

The Regents, the Advisory Board, the Community College President, or the Chancellor of the NMSU System may request additional meetings as needed.

All meetings which include either the Regents or a quorum of any local school board will be conducted in accordance with the New Mexico Open Meetings Act. [N.M. Stat § 10-15-1 et seq. (1978)]

E. Selection of Community College President

In the event of a vacancy, the Regents and the Advisory Board will jointly conduct a search for qualified candidates for President of the Community College. The Regents, after consultation with the Advisory Board, will select a president for the Community College. [N.M. Stat § 21-14-2(C) (1978)]

ARTICLE 2
THE REGENTS

Except as otherwise provided in this Operating Agreement, the Regents have full authority and responsibility over all aspects of the Community College, including but not limited to academic matters. [N.M. Stat § 21-14-2(D)(1) (1978)] The full authority of the Regents, under this Agreement may be delegated at the discretion of the Regents, to the Chancellor of the NMSU System.

ARTICLE 3
ACADEMIC MATTERS

A. Programs of Study
As provided by state statute, the Community College will offer programs of study which have been approved by NMSU. [N.M. Stat § 21-14-2(D)(3) (1978)] Such programs will provide:

1. The first two years of college education; or
2. Vocational and technical curricula of not more than two years’ duration designed to fit individuals for employment in recognized occupations. [N.M. Stat § 21-14-1(A)(1978)]
B. Employment of Faculty
The Regents agree to consider application of qualified local applicants before employing teachers from the local school system(s). [N.M. Stat § 21-14-2(D)(5) (1978)]

ARTICLE 4
FINANCIAL MATTERS

C. Financial Management
The Regents will be responsible for the financial management of the Community College. The Advisory Board may review all procedures, reports and all other matters related to the financial management of the Community College.

D. Budget Recommendation
The President of the Community College will prepare and present to the Advisory Board a proposed annual budget including the long range plan of the college and the status of all capital outlay projects. The Advisory Board will review an annual budget for the Community College for recommendation to the Regents. [N.M. Stat § 21-14-2(B)(3) (1978)]

E. Funding Sources
The Community College will be financed by state appropriations, tuition and fees charged to students, grants, and gifts, and such other funds as may be made available through additional tax levies pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.]

The New Mexico Higher Education Department will recommend an appropriation for the Community College based on its financial requirements. [N.M. Stat § 21-14-9 (1978)]

The Community College may borrow money, through college district general obligation bonds, for the purpose of constructing and equipping buildings and to make other real property improvements. [N.M. Stat § 21-2A-6(A) (1978)] All taxes levied to pay for principal and interest on the general obligation bonds of the Community College shall be in addition to the taxes levied for operating, maintaining and providing facilities for the Community College pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.] The repayment of district general obligation bonds will be made in accordance with the College District Tax Act and is the general obligation of the college district. [N.M. Stat § 21-2A-7 (1978) et seq.] The Regents will not have any obligation to repay the bonds.

The Community College’s tuition and fees will be set by the Regents. [N.M. Stat § 21-14-5 (1978)] New Mexico residents, residing outside of the Community College service area, will be assessed an out-of-district fee each semester. Non-residents of New Mexico will be assessed tuition and fees at a higher rate than residents.
ARTICLE 5
FACILITIES

A. Acquisition of Property in Name of Regents

All property acquired by the Community College, including all property acquired from the proceeds of a bond issue shall be taken in the name of the Regents.  [N.M. Stat § 21-14-14 (1978)]

B. Cooperative Use of Physical Facilities

Subject to space and other resource constraints, the Community College will share facilities in support of NMSU’s bachelors and appropriate graduate programs, and the NMSU University will share facilities on the Las Cruces campus in support of the Community College’s programs.  [N.M. Stat § 21-14-2(D)(4) (1978)]

ARTICLE 6
ADDITIONAL TERMS

A. Entire Agreement

This Agreement is made pursuant to fulfill the requirements of state law and is subject to biennial review by all parties and the review and comment of the New Mexico Department of Higher Education.  [N.M. Stat § 21-14-2(B)(1) (1978)]  This Agreement constitutes the entire agreement between the Advisory Board and the Regents and supersedes any prior agreements, contracts or understandings, expressed or implied, oral or written.

B. Termination

This Agreement may be terminated by mutual consent or by either the Advisory Board or the Regents, upon six months’ notice, provided there are no outstanding general obligations or revenue bonds. If the Community College has outstanding general obligation or revenue bonds, then neither the Advisory Board nor the Regents may terminate this Agreement until the outstanding bonds are retired, except as otherwise provided by law. [N.M. Stat § 21-14-2(E) (1978); referencing N.M. Stat § 21-13-24.1 (1978)]

C. No Third Party Beneficiaries

This Agreement is for the benefit of the Parties only. No rights or benefits are conferred to any third-party by or through this Agreement.
D. Effective Date

This Agreement will be effective and binding upon the Advisory Board and the Regents of NMSU from the date on which both of these entities have approved the Agreement as indicated by the attestation and signatures of the duly authorized representatives below.

APPROVAL AND ATTESTATION

Regents of New Mexico State University

The Regents of New Mexico State University duly approved this Agreement at an official meeting on ______________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ____________________________

_______________________________
Debra Hicks, Chair

Branch Community College Board

The branch community college board (Advisory Board) of the Alamogordo Community College duly approved this agreement at an official meeting on ______________________(date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ____________________________

_______________________________
Name

_______________________________
Title: ____________________________
AGREEMENT
PERTAINING TO THE OPERATION OF THE
CARLSBAD COMMUNITY COLLEGE

BETWEEN

THE REGENTS OF NEW MEXICO STATE UNIVERSITY

AND

THE ADVISORY BOARD OF

CARLSBAD COMMUNITY COLLEGE
AGREEMENT
PERTAINING TO THE OPERATION OF THE
CARLSBAD COMMUNITY COLLEGE

The Regents of New Mexico State University (Regents), the parent university of the Carlsbad Community College (the Community College), and the branch community college board (Advisory Board) hereby enter into the following agreement concerning the operation of the Community College (the Operating Agreement).

This Operating Agreement is adopted in accordance with the requirements of state law and founded on the desire of the parties to provide quality educational services must be provided in accordance with the needs of the Community College service area.

ARTICLE 1
ADVISORY BOARD

A. Advisory Board Defined

The Advisory Board consists of the local school board, or the combined local school boards, acting as a single board, situated within the local taxing district which supports the Community College. [N.M. Stat § 21-14-2(A) (1978)]

B. Multiple School District Boards

For Community Colleges located in counties with more than one local school district, the Advisory Board may designate a committee to act on its behalf (Advisory Committee). The Advisory Committee will consist of two representative board members from each local school board. The Advisory Board may delegate to the Advisory Committee all functions and responsibilities of the Advisory Board, except that the Advisory Board may not delegate its duty to certify tax levies or elections for tax levies.

C. Duties of the Advisory Board

Pursuant to state law, the duties of the Advisory Board are as follows:

1. Enter into a written agreement with the Regents, subject to biennial review by the parties and to the review and commentary of the commission on higher education;
2. Act in an advisory capacity to the Regents in all matters relating to the conduct of the Community College;
3. Approve the annual operating budget of Community College for recommendation to the Regents;
4. Certify to the board of county commissioners the tax levy; and
5. Conduct the election for tax levies for the Community College.  
   [N.M. Stat § 21-14-2(B) (1978)]
D. Advisory Board Meetings

The Advisory Board will meet as necessary to: (2) certify to the board of county commissioners the tax levy; and (3) conduct the election for tax levies for the Community College.

In addition, the Advisory Board, or the Advisory Committee if one has been formed, will review the annual operating budget of Community College for recommendation to the Regents, and, upon request of either party, will meet, at least once a year, with the Regents. The purpose of the joint meeting is to allow each of the parties to report to the other and make inquiry of the other on all matters relating to the conduct of the Community College.

The Regents, the Advisory Board, the Community College President, or the Chancellor of the NMSU System may request additional meetings as needed.

All meetings which include either the Regents or a quorum of any local school board will be conducted in accordance with the New Mexico Open Meetings Act. [N.M. Stat § 10-15-1 et seq. (1978)]

E. Selection of Community College President

In the event of a vacancy, the Regents and the Advisory Board will jointly conduct a search for qualified candidates for President of the Community College. The Regents, after consultation with the Advisory Board, will select a president for the Community College. [N.M. Stat § 21-14-2(C) (1978)]

ARTICLE 2
THE REGENTS

Except as otherwise provided in this Operating Agreement, the Regents have full authority and responsibility over all aspects of the Community College, including but not limited to academic matters. [N.M. Stat § 21-14-2(D)(1) (1978)] The full authority of the Regents, under this Agreement may be delegated at the discretion of the Regents, to the Chancellor of the NMSU System.

ARTICLE 3
ACADEMIC MATTERS

A. Programs of Study

As provided by state statute, the Community College will offer programs of study which have been approved by NMSU. [N.M. Stat § 21-14-2(D)(3) (1978)] Such programs will provide:

1. The first two years of college education; or
2. Vocational and technical curricula of not more than two years’ duration designed to fit individuals for employment in recognized occupations. [N.M. Stat § 21-14-1(A)(1978)]
B. Employment of Faculty
The Regents agree to consider application of qualified local applicants before employing teachers from the local school system(s). [N.M. Stat § 21-14-2(D)(5) (1978)]

ARTICLE 4
FINANCIAL MATTERS

C. Financial Management
The Regents will be responsible for the financial management of the Community College. The Advisory Board may review all procedures, reports and all other matters related to the financial management of the Community College.

D. Budget Recommendation
The President of the Community College will prepare and present to the Advisory Board a proposed annual budget including the long range plan of the college and the status of all capital outlay projects. The Advisory Board will review an annual budget for the Community College for recommendation to the Regents. [N.M. Stat § 21-14-2(B)(3) (1978)]

E. Funding Sources
The Community College will be financed by state appropriations, tuition and fees charged to students, grants, and gifts, and such other funds as may be made available through additional tax levies pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.]

The New Mexico Higher Education Department will recommend an appropriation for the Community College based on its financial requirements. [N.M. Stat § 21-14-9 (1978)]

The Community College may borrow money, through college district general obligation bonds, for the purpose of constructing and equipping buildings and to make other real property improvements. [N.M. Stat § 21-2A-6(A) (1978)] All taxes levied to pay for principal and interest on the general obligation bonds of the Community College shall be in addition to the taxes levied for operating, maintaining and providing facilities for the Community College pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.] The repayment of district general obligation bonds will be made in accordance with the College District Tax Act and is the general obligation of the college district. [N.M. Stat § 21-2A-7 (1978) et seq.] The Regents will not have any obligation to repay the bonds.

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ARTICLE 5
FACILITIES

A. Acquisition of Property in Name of Regents

All property acquired by the Community College, including all property acquired from the proceeds of a bond issue shall be taken in the name of the Regents. [N.M. Stat § 21-14-14 (1978)]

B. Cooperative Use of Physical Facilities

Subject to space and other resource constraints, the Community College will share facilities in support of NMSU’s bachelors and appropriate graduate programs, and the NMSU University will share facilities on the Las Cruces campus in support of the Community College’s programs. [N.M. Stat § 21-14-2(D)(4) (1978)]

ARTICLE 6
ADDITIONAL TERMS

A. Entire Agreement

This Agreement is made pursuant to fulfill the requirements of state law and is subject to biennial review by all parties and the review and comment of the New Mexico Department of Higher Education. [N.M. Stat § 21-14-2(B)(1) (1978)] This Agreement constitutes the entire agreement between the Advisory Board and the Regents and supersedes any prior agreements, contracts or understandings, expressed or implied, oral or written.

B. Termination

This Agreement may be terminated by mutual consent or by either the Advisory Board or the Regents, upon six months’ notice, provided there are no outstanding general obligations or revenue bonds. If the Community College has outstanding general obligation or revenue bonds, then neither the Advisory Board nor the Regents may terminate this Agreement until the outstanding bonds are retired, except as otherwise provided by law. [N.M. Stat § 21-14-2(E) (1978); referencing N.M. Stat § 21-13-24.1 (1978)]

C. No Third Party Beneficiaries

This Agreement is for the benefit of the Parties only. No rights or benefits are conferred to any third-party by or through this Agreement.
D. Effective Date

This Agreement will be effective and binding upon the Advisory Board and the Regents of NMSU from the date on which both of these entities have approved the Agreement as indicated by the attestation and signatures of the duly authorized representatives below.

APPROVAL AND ATTESTATION

Regents of New Mexico State University

The Regents of New Mexico State University duly approved this Agreement at an official meeting on ______________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ________________ _________________________________

Debra Hicks, Chair

Branch Community College Board

The branch community college board (Advisory Board) of the Carlsbad Community College duly approved this agreement at an official meeting on ______________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ________________ _________________________________

Name

Title: ____________________________
AGREEMENT
PERTAINING TO THE OPERATION OF THE
DOÑA ANA COMMUNITY COLLEGE

BETWEEN

THE REGENTS OF NEW MEXICO STATE UNIVERSITY

AND

THE ADVISORY BOARD OF

DOÑA ANA COMMUNITY COLLEGE
AGREEMENT
PERTAINING TO THE OPERATION OF THE
DOÑA ANA COMMUNITY COLLEGE

The Regents of New Mexico State University (Regents), the parent university of Doña Ana Community College (the Community College), and the branch community college board (Advisory Board) hereby enter into the following agreement concerning the operation of the Community College (the Operating Agreement).

This Operating Agreement is adopted in accordance with the requirements of state law and founded on the desire of the parties to provide quality educational services must be provided in accordance with the needs of the Community College service area.

ARTICLE 1
ADVISORY BOARD

A. Advisory Board Defined

The Advisory Board consists of the local school board, or the combined local school boards, acting as a single board, situated within the local taxing district which supports the Community College. [N.M. Stat § 21-14-2(A) (1978)]

B. Multiple School District Boards

For Community Colleges located in counties with more than one local school district, the Advisory Board may designate a committee to act on its behalf (Advisory Committee). The Advisory Committee will consist of two representative board members from each local school board. The Advisory Board may delegate to the Advisory Committee all functions and responsibilities of the Advisory Board, except that the Advisory Board may not delegate its duty to certify tax levies or elections for tax levies.

C. Duties of the Advisory Board

Pursuant to state law, the duties of the Advisory Board are as follows:

1. Enter into a written agreement with the Regents, subject to biennial review by the parties and to the review and commentary of the commission on higher education;
2. Act in an advisory capacity to the Regents in all matters relating to the conduct of the Community College;
3. Approve the annual operating budget of Community College for recommendation to the Regents;
4. Certify to the board of county commissioners the tax levy; and
5. Conduct the election for tax levies for the Community College. [N.M. Stat § 21-14-2(B) (1978)]
D. Advisory Board Meetings

The Advisory Board will meet as necessary to: (2) certify to the board of county commissioners the tax levy; and (3) conduct the election for tax levies for the Community College.

In addition, the Advisory Board, or the Advisory Committee if one has been formed, will review the annual operating budget of Community College for recommendation to the Regents, and, upon request of either party, will meet, at least once a year, with the Regents. The purpose of the joint meeting is to allow each of the parties to report to the other and make inquiry of the other on all matters relating to the conduct of the Community College.

The Regents, the Advisory Board, the Community College President, or the Chancellor of the NMSU System may request additional meetings as needed.

All meetings which include either the Regents or a quorum of any local school board will be conducted in accordance with the New Mexico Open Meetings Act. [N.M. Stat § 10-15-1 et seq. (1978)]

E. Selection of Community College President

In the event of a vacancy, the Regents and the Advisory Board will jointly conduct a search for qualified candidates for President of the Community College. The Regents, after consultation with the Advisory Board, will select a president for the Community College. [N.M. Stat § 21-14-2(C) (1978)]

ARTICLE 2
THE REGENTS

Except as otherwise provided in this Operating Agreement, the Regents have full authority and responsibility over all aspects of the Community College, including but not limited to academic matters. [N.M. Stat § 21-14-2(D)(1) (1978)] The full authority of the Regents, under this Agreement may be delegated at the discretion of the Regents, to the Chancellor of the NMSU System.

ARTICLE 3
ACADEMIC MATTERS

A. Programs of Study
As provided by state statute, the Community College will offer programs of study which have been approved by NMSU. [N.M. Stat § 21-14-2(D)(3) (1978)] Such programs will provide:

1. The first two years of college education; or
2. Vocational and technical curricula of not more than two years’ duration designed to fit individuals for employment in recognized occupations. [N.M. Stat § 21-14-1(A)(1978)]
B. Employment of Faculty
The Regents agree to consider application of qualified local applicants before employing teachers from the local school system(s). [N.M. Stat § 21-14-2(D)(5) (1978)]

ARTICLE 4
FINANCIAL MATTERS

C. Financial Management
The Regents will be responsible for the financial management of the Community College. The Advisory Board may review all procedures, reports and all other matters related to the financial management of the Community College.

D. Budget Recommendation
The President of the Community College will prepare and present to the Advisory Board a proposed annual budget including the long range plan of the college and the status of all capital outlay projects. The Advisory Board will review an annual budget for the Community College for recommendation to the Regents. [N.M. Stat § 21-14-2(B)(3) (1978)]

E. Funding Sources
The Community College will be financed by state appropriations, tuition and fees charged to students, grants, and gifts, and such other funds as may be made available through additional tax levies pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.]

The New Mexico Higher Education Department will recommend an appropriation for the Community College based on its financial requirements. [N.M. Stat § 21-14-9 (1978)]

The Community College may borrow money, through college district general obligation bonds, for the purpose of constructing and equipping buildings and to make other real property improvements. [N.M. Stat § 21-2A-6(A) (1978)] All taxes levied to pay for principal and interest on the general obligation bonds of the Community College shall be in addition to the taxes levied for operating, maintaining and providing facilities for the Community College pursuant to the College District Tax Act. [N.M. Stat § 21-2A-1 (1978) et seq.] The repayment of district general obligation bonds will be made in accordance with the College District Tax Act and is the general obligation of the college district. [N.M. Stat § 21-2A-7 (1978) et seq.] The Regents will not have any obligation to repay the bonds.

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ARTICLE 5
FACILITIES

A. Acquisition of Property in Name of Regents

All property acquired by the Community College, including all property acquired from the proceeds of a bond issue shall be taken in the name of the Regents. [N.M. Stat § 21-14-14 (1978)]

B. Cooperative Use of Physical Facilities

Subject to space and other resource constraints, the Community College will share facilities in support of NMSU’s bachelors and appropriate graduate programs, and the NMSU University will share facilities on the Las Cruces campus in support of the Community College’s programs. [N.M. Stat § 21-14-2(D)(4) (1978)]

ARTICLE 6
ADDITIONAL TERMS

A. Entire Agreement

This Agreement is made pursuant to fulfill the requirements of state law and is subject to biennial review by all parties and the review and comment of the New Mexico Department of Higher Education. [N.M. Stat § 21-14-2(B)(1) (1978)] This Agreement constitutes the entire agreement between the Advisory Board and the Regents and supersedes any prior agreements, contracts or understandings, expressed or implied, oral or written.

B. Termination

This Agreement may be terminated by mutual consent or by either the Advisory Board or the Regents, upon six months’ notice, provided there are no outstanding general obligations or revenue bonds. If the Community College has outstanding general obligation or revenue bonds, then neither the Advisory Board nor the Regents may terminate this Agreement until the outstanding bonds are retired, except as otherwise provided by law. [N.M. Stat § 21-14-2(E) (1978); referencing N.M. Stat § 21-13-24.1 (1978)]

C. No Third Party Beneficiaries

This Agreement is for the benefit of the Parties only. No rights or benefits are conferred to any third-party by or through this Agreement.
D. Effective Date

This Agreement will be effective and binding upon the Advisory Board and the Regents of NMSU from the date on which both of these entities have approved the Agreement as indicated by the attestation and signatures of the duly authorized representatives below.

APPROVAL AND ATTESTATION

Regents of New Mexico State University

The Regents of New Mexico State University duly approved this Agreement at an official meeting on ______________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ____________________________

Debra Hicks, Chair

Branch Community College Board

The branch community college board (Advisory Board) of Doña Ana Community College duly approved this agreement at an official meeting on ______________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ____________________________

Name

Title: ____________________________
AGREEMENT PERTAINING TO THE OPERATION OF THE GRANTS COMMUNITY COLLEGE

BETWEEN

THE REGENTS OF NEW MEXICO STATE UNIVERSITY

AND

THE ADVISORY BOARD OF

THE GRANTS COMMUNITY COLLEGE
AGREEMENT
PERTAINING TO THE OPERATION OF THE
GRANTS COMMUNITY COLLEGE

The Regents of New Mexico State University (Regents), the parent university of Grants Community College (the Community College), and the branch community college board (Advisory Board) hereby enter into the following agreement concerning the operation of the Community College (the Operating Agreement).

This Operating Agreement is adopted in accordance with the requirements of state law and founded on the desire of the parties to provide quality educational services must be provided in accordance with the needs of the Community College service area.

ARTICLE 1
ADVISORY BOARD

A. Advisory Board Defined

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2. Act in an advisory capacity to the Regents in all matters relating to the conduct of the Community College;
3. Approve the annual operating budget of Community College for recommendation to the Regents;
4. Certify to the board of county commissioners the tax levy; and
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[N.M. Stat § 21-14-2(B) (1978)]
D. Advisory Board Meetings

The Advisory Board will meet as necessary to: (2) certify to the board of county commissioners the tax levy; and (3) conduct the election for tax levies for the Community College.

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E. Selection of Community College President

In the event of a vacancy, the Regents and the Advisory Board will jointly conduct a search for qualified candidates for President of the Community College. The Regents, after consultation with the Advisory Board, will select a president for the Community College. [N.M. Stat § 21-14-2(C) (1978)]

ARTICLE 2
THE REGENTS

Except as otherwise provided in this Operating Agreement, the Regents have full authority and responsibility over all aspects of the Community College, including but not limited to academic matters. [N.M. Stat § 21-14-2(D)(1) (1978)] The full authority of the Regents, under this Agreement may be delegated at the discretion of the Regents, to the Chancellor of the NMSU System.

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FACILITIES

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ARTICLE 6
ADDITIONAL TERMS

A. Entire Agreement

This Agreement is made pursuant to fulfill the requirements of state law and is subject to biennial review by all parties and the review and comment of the New Mexico Department of Higher Education.  [N.M. Stat § 21-14-2(B)(1) (1978)]  This Agreement constitutes the entire agreement between the Advisory Board and the Regents and supersedes any prior agreements, contracts or understandings, expressed or implied, oral or written.

B. Termination

This Agreement may be terminated by mutual consent or by either the Advisory Board or the Regents, upon six months’ notice, provided there are no outstanding general obligations or revenue bonds. If the Community College has outstanding general obligation or revenue bonds, then neither the Advisory Board nor the Regents may terminate this Agreement until the outstanding bonds are retired, except as otherwise provided by law.  [N.M. Stat § 21-14-2(E) (1978); referencing N.M. Stat § 21-13-24.1 (1978)]

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This Agreement is for the benefit of the Parties only. No rights or benefits are conferred to any third-party by or through this Agreement.
D. Effective Date

This Agreement will be effective and binding upon the Advisory Board and the Regents of NMSU from the date on which both of these entities have approved the Agreement as indicated by the attestation and signatures of the duly authorized representatives below.

APPROVAL AND ATTESTATION

Regents of New Mexico State University

The Regents of New Mexico State University duly approved this Agreement at an official meeting on ________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ________________

Debra Hicks, Chair

Branch Community College Board

The branch community college board (Advisory Board) of the Grants Community College duly approved this agreement at an official meeting on ________________ (date).

As the duly authorized representative, I hereby attest to the truth of the foregoing statement.

Date: ________________

Name

Title: __________________________
Presented By: Liz Ellis, General Counsel

Agenda Item: Revision to RPM 15.65, Security Clearance (Department of Defense)

Requested Action of the Board of Regents: Approval of Revised RPM 15.65, Security Clearance (Department of Defense)

Executive Summary: This revision will add the position of president of the Las Cruces campus to the list of authorized key management personnel, for purposes of access to classified information. This policy is administered by the NMSU Facility Security Officer, Chris J. Scott from PSL Security Safety Services. A clean final version, and a redlined compare version, are attached.


Prior Approvals:

Agenda Item Approved By:

Liz Ellis, General Counsel
NMSU General Counsel

Date: 6/28/18
15.65 Security Clearance (Department of Defense)

Those persons occupying the following positions at New Mexico State University shall be known as the Key Management Personnel Group for safeguarding classified information. They shall implement the provisions of the National Industrial Security Program Operating Manual (NISPOM)

- Chancellor
- President of the NMSU University
- Executive Vice President and Provost
- Vice President for Research
- Director of the Physical Science Laboratory
- Senior Security Manager
- Facility Security Officer
- Insider Threat Senior Management Official

The members of the Key Management Personnel Group have been processed, or will be processed for a personnel security clearance for access to classified information, to the level of the Facility Clearance granted to this institution, as provided for in the NISPOM. Individuals will be denied access to classified information until such time that their security clearances are granted.

The Key Management Personnel Group is hereby delegated all of the board’s duties and responsibilities pertaining to the protection of classified information under classified contracts awarded to New Mexico State University. In addition, the Key Management Personnel Group shall have the authority and responsibility for the negotiation, execution, and administration of the contracts, consistent with NMSU policy and state and federal law.

The individual members of the Board of Regents shall not require, shall not have, and will be effectively excluded from access to all national security information disclosed to NMSU. The duties and responsibilities of the Board of Regents as a policy-making body do not require access to classified contracts awarded to NMSU, and therefore need not be processed for a personnel security clearance.

The foregoing will not be modified, amended or rescinded without prior notice to the United States Government through the cognizant security office.
15.65 Security Clearance (Department of Defense)

Those persons occupying the following positions at New Mexico State University shall be known as the Key Management Personnel Group for safeguarding classified information. They shall implement the provisions of the National Industrial Security Program Operating Manual (NISPOM)

- Chancellor
- President of the NMSU University
- Executive Vice President and Provost
- Vice President for Research
- Director of the Physical Science Laboratory
- Senior Security Manager
- Facility Security Officer
- Insider Threat Senior Management Official

The members of the Key Management Personnel Group have been processed, or will be processed for a personnel security clearance for access to classified information, to the level of the Facility Clearance granted to this institution, as provided for in the NISPOM. Individuals will be denied access to classified information until such time that their security clearances are granted.

The Key Management Personnel Group is hereby delegated all of the board’s duties and responsibilities pertaining to the protection of classified information under classified contracts awarded to New Mexico State University. In addition, the Key Management Personnel Group shall have the authority and responsibility for the negotiation, execution, and administration of the contracts, consistent with NMSU policy and state and federal law.

The individual members of the Board of Regents shall not require, shall not have, and will be effectively excluded from access to all national security information disclosed to NMSU. The duties and responsibilities of the Board of Regents as a policy-making body do not require access to classified contracts awarded to NMSU, and therefore need not be processed for a personnel security clearance.

The foregoing will not be modified, amended or rescinded without prior notice to the United States Government through the cognizant security office.
Agenda Item # C-3

Board of Regents Meeting
Meeting Date:
Agenda Item Cover Page

☑ Action Item
☒ Consent Item
☐ Informational Item

Presented By: Liz Ellis, General Counsel

Agenda Item: Revision to RPM 1.10, NMSU System Policy and Procedures

Requested Action of the Board of Regents: Approval of Non-Substantive Update to RPM 1.10, NMSU System Policy and Procedures.

Executive Summary: This revision reformats and clarifies RPM 1.10. These changes coincide with an update to ARP 1.10 which aligned the current practice with the written policy and rule which pre-dated the current web-based policy system. It also clarifies that the rules in the ARP (Administrative Rules and Procedures) have the same force and effect as policies approved by the Regents, provided they are not in conflict. A clean final version, and a redlined compare version, are attached.

References:

Prior Approvals: UAC and Chancellor approved 05/08/18

Agenda Item Approved By:

Liz Ellis, General Counsel
NMSU General Counsel

Date 6/28/18
1.10 NMSU System Policies and Rules v050218f

Pursuant to the authority granted under the New Mexico Constitution and related statutes, the Board of Regents governs New Mexico State University and the New Mexico Department of Agriculture (collectively the “NMSU System”) through the adoption of policies, rules and procedures (“policies”). These policies provide direction relating to the mission and goals for the NMSU System, as well as the Board’s delegation or reservation of authority. The purpose of this policy is to establish a framework for the adoption of the NMSU System policies and to authorize the development of enforceable operational rules and procedures as may be necessary to achieve the goals and directives established by the Board of Regents.

A. Regents Policy Manual (RPM): Policies approved by the Board of Regents, referred to as regents policies, shall be maintained in a document titled “Regents Policy Manual” (RPM), formerly titled, the “NMSU Policy Manual”, which may take the form of an online website.

B. Scope of Application: Regents policies and apply to the entire NMSU system, unless otherwise provided in the policy.

C. Revisions to RPM: Revisions to the Regents Policy Manual, except as otherwise provided below, are effective upon approval by the Board of Regents in open meeting, or on such other date as reflected in the Board’s motion or approved policy. In those instances where there is a compelling need for an immediate policy change, the chancellor may adopt and implement provisional policy, provided that the provisional policy is presented to the Board of Regents for ratification in open meeting as soon as practicable.

D. Implementing Rules: The chancellor is authorized to adopt operational rules and procedures as may be appropriate and necessary to implement the policies adopted by the Board of Regents, and to ensure efficient and effective organizational/transactional control. Those rules and procedures which have been formally adopted and approved by the Chancellor shall be maintained in a document entitled “Administrative Rules and Procedures of NMSU” (ARP) which may take the form of an online website. The ARP shall apply throughout the NMSU system unless otherwise provided. The university shall include in the ARP a process that provides adequate opportunity for university stakeholders to provide comment regarding proposals to amend, repeal, or propose new policies or ARP provisions.

E. Shared Governance: Policy and rule proposals which involve the academic mission and matters of shared governance, as defined in RPM 1.70, shall be reviewed and approved by the Faculty Senate before submission to the chancellor for final approval. Any such proposal not approved by Faculty Senate shall become effective only upon approval from the Board of Regents.

F. Non-Contractual Policies/Rules: Provisions contained in the Regents Policy Manual and Administrative Rules and Procedures shall not create any type of contract, implied or otherwise, between the regents and their employees or any other individual or entity. Regents policies and rules in the ARP may be amended or revoked at any time in accordance with this policy and ARP 1.10. The rules in the ARP have the same force and effect as the policies approved by the Regents provided that such rules are not in conflict with the regents policies.
1.10 NMSU System Policies and Procedures Rules v050218f

A. Policy Statements

Pursuant to the authority granted under the New Mexico Constitution and related statutes, the Board of Regents governs New Mexico State University and the New Mexico Department of Agriculture (collectively the “NMSU System”) through the adoption of policies, rules and procedures (“policies”). These policies provide direction relating to the mission and goals for the NMSU System, as well as delegate the Board’s delegation or reserve reservation of authority. The purpose of this policy is to establish a framework for the adoption of the NMSU System policies and to authorize the development of enforceable administrative operational rules and procedures as may be necessary to achieve the goals and directives established by the Board of Regents.

A. Regents Policy statements, once Manual (RPM): Policies approved by the Board of Regents, referred to as regents policies, shall be maintained in a document titled “Regents Policy Manual” (RPM) formerly titled, the “NMSU Policy Manual” which may take the form of an online website. All changes to the Regent

B. Scope of Application: Regents policies and apply to the entire NMSU system, unless otherwise provided in the policy.

C. Revisions to RPM: Revisions to the Regents Policy Manual, except as otherwise provided below, are effective only upon approval by the Board of Regents in open meeting. The, or on such other date as reflected in the Board’s motion or approved policy. In those instances where there is a compelling need for an immediate policy change, the chancellor may adopt and implement provisional policy, provided that the provisional policy is presented to the Board of Regents policies shall apply to the entire NMSU system unless otherwise provided for ratification in open meeting as soon as practicable.

D. Implementing Rules: The chancellor is authorized to adopt administrative operational rules and procedures as may be appropriate and necessary to implement the policies adopted by the Board of Regents, and to ensure efficient and effective organizational/transactional control. Those rules and procedures which have been formally adopted and approved by the Chancellor shall be maintained in a document entitled “Administrative Rules and Procedures of NMSU” (ARP) which may take the form of an online website. The ARP shall apply throughout the NMSU system unless otherwise stated provided. The university shall include in the ARP a process that provides adequate opportunity for university stakeholders to provide comment regarding proposals to amend, repeal, or propose new policies or ARP provisions. Any proposal which involves

E. Shared Governance: Policy and rule proposals which involve the academic mission and matters of shared governance, as defined in RPM 1.70, shall be reviewed and approved by the Faculty Senate before submission to the chancellor for final approval. Any such proposal not approved by Faculty Senate shall become effective only upon approval from the Board of Regents.
4.F. **Non-Contractual Policies/Rules:** Provisions contained in the Regents Policy Manual and Administrative Rules and Procedures shall not create any type of contract, implied or otherwise, between the regents and its employees or any other individual or entity. Policies, Regents policies and rules in the ARP may be amended or revoked at any time in accordance with this policy, and ARP 1.10. The rules in the ARP have the same force and effect as the policies approved by the Regents provided that such rules are not in conflict with the regents policies.

5. A policy approved by the Board of Regents will become effective on the date of approval, or on such other date as reflected in the approved policy. In those instances where there is a compelling need for an immediate policy change, the chancellor may adopt and implement provisional policy, provided that the provisional policy is presented to the Board of Regents in open meeting as soon as practicable.
Agenda Item: NMSU-Las Cruces – Local Government Road Fund (LGRF) Resolution

Requested Action of the Board of Regents: Approval of NMDOT resolution for Espina pavement replacement by North Horseshoe Street and for the NMSU additional work to continue the repaving to South Horseshoe Street.

Executive Summary: This is the 2018 Local Government Road fund cost share that requires a resolution by the NMSU Board of Regents. New Mexico Department of Transportation’s share shall be 75% or $127,335.00 and New Mexico State University's proportional matching share shall be 25% or $42,445.00 for a total project cost of $169,780. In addition, NMSU will add another $300,000 to expand the road work from North Horseshoe to South Horseshoe, bring the cost to $469,780. The NMSU share is from Building Repair and Renewal (BRR) funding.

References:
N/A

Prior Approvals:
N/A

Agenda Item Approved By:

Glen Haubold, Associate Vice President for Facilities and Services

Andrew J. Burke, Senior Vice President Administration and Finance
This item is the 2018 Local Government Road Fund (LGRF) match. New Mexico Department of Transportation’s share shall be 75% or $127,335, and New Mexico State University’s (NMSU) proportional matching share shall be 25% or $42,445.00 for a total project cost of $169,780.00.

In addition, NMSU will add another $300,000 to the project, financed by Building Repair and Renewal, to extend the road work from the North Horseshoe to South Horseshoe. The total cost of $342,445 includes a contingency in the event of bids exceeding the cost estimate. Per policy and statute, any subsequent increase exceeding 10% of the $469,780 would require additional approvals.

This language from the Resolution describes the work:

Be it resolved by the New Mexico State University to enter into Cooperative Agreement Project Number SP-1-19 (983), Control Number HW2 L100383 with the New Mexico Department of Transportation for LGRF Project for year 2018 – 2019 to:

1. Replace the existing pavement on Espina Street with 20-year pavement.
2. Control of requisite pedestrian traffic by installation of ADA compliant sidewalks and sidewalk entry/exit points at designated intersections.
3. Control and improvement of storm water drainage along Espina Street by addressing problems in areas of ponding.
4. Control and calm vehicle and pedestrian traffic interactions by installation of traffic calming strips at the crosswalk between Skeen Hall Parking Lot and The ASNMSU Center for the Performing Arts.
5. Control and calm vehicle traffic by the addition of day/night visible stripping on current two lane with center turn lane stripping. Due to thin pavement, milling the old stripping off was not possible and painting the old stripping did not work very well.
6. Replacement of curb and gutter where required.
LOCAL GOVERNMENT ROAD FUND
COOPERATIVE AGREEMENT

This Agreement is between the New Mexico Department of Transportation (Department) and New Mexico State University (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2 and the State Transportation Commission Policy No. 44-12, the parties agree as follows:

1. Purpose.
The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Design, reconstruction, drainage improvements and construction management of Espina Street, as described in Project No. SP-1-19(983), Control No. HW2 L100383, and the Public Entity’s resolution attached as Exhibit C (Project). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the Parties.

2. Project Funding.
   a. The estimated total cost for the Project is One Hundred Sixty Nine Thousand Seven Hundred Eighty Dollars and Zero Cents ($169,780.00) to be funded in proportional share by the parties as follows:
      1. Department’s share shall be 75% $127,335.00
         Design, reconstruction, drainage improvements and construction management of Espina Street
      2. The Public Entity’s required proportional matching Share shall be 25% $42,445.00
         For purpose stated above
      3. Total Project Cost $169,780.00
   b. The Public Entity shall pay all Project costs, which exceed the total amount of One Hundred Sixty Nine Thousand Seven Hundred Eighty Dollars and Zero Cents ($169,780.00).
   c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.
3. The Department Shall:
Pay project funds as identified in Section 2, Paragraph a1, to the Public Entity in a single lump sum payment after:
   a. Receipt of a Notice of Award and Notice to Proceed; and,
   b. Verification of available Local Government Road Funds and Public Entity’s local matching funds identified in Section 2, Paragraph a2.
   c. All required documents must include Department Project and Control Number.

4. The Public Entity Shall:
   a. Act in the capacity of lead agency for the purpose as described in Section 1.
   b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
   c. Be solely responsible for all local matching funds identified in Section 2. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
   d. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
   e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances
   f. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
      1. Utility Certification,
      2. Drainage and storm drain design,
      3. Geotechnical design,
      4. Pavement design,
      5. Environmental and archaeological clearances Certification,
      6. Right of way acquisition Certification,
      7. Hazardous substance/waste site(s) contamination,
      8. Railroad Certification,
      9. Intelligent Transportation System (ITS) Certification
   g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
   h. Obtain all required written agreements or permits, when applicable, from all public and private entities.
   i. Allow the Department to inspect the Project to determine that the Project is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, will result in termination, for default, including without limitation the Public Entity’s costs for funding, labor, equipment and materials.
   j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
   k. Within thirty (30) days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation’s Standard Specification, Current Edition; American Public Works
Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, which is attached as Exhibit A.

1. Within thirty (30) days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **Project Certification of Design, Construction, and Cost form**.

m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.

n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

5. **Both Parties Agree:**

a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.

b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) days of project completion or expiration of this Agreement, whichever occurs first.

c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.

d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.

e. That the provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

6. **Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **December 31, 2019**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.
7. Termination.
   a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) days written notice.
   b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
   c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
   d. Neither party has any obligation after termination, except as stated in Sections 4n and 5.

8. Third Party Beneficiary.
   It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

   As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq.

    The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least $1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor’s policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

    To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney’s fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

11. Scope of Agreement.
    This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this Agreement.
12. Terms of this Agreement.
The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

13. Legal Compliance.
The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in in each contract and subcontract at all tiers.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

15. Appropriations and Authorizations.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature or the Congress of the United States if federal funds are involved, this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

16. Accountability of Receipts and Disbursements.
There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.
17. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

18. Applicable Law.
The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

19. Amendment.
This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

The remainder of this page is intentionally left blank.
In witness whereof, each party is signing this Agreement on the date stated opposite that party’s signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: ___________________________ Date: ________________
    Cabinet Secretary or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation’s Office of General Counsel

By: ___________________________ Date: ________________
    Assistant General Counsel

NEW MEXICO STATE UNIVERSITY

By: ___________________________ Date: ________________

Title: ___________________________

Attest: _________________________
    Clerk or Designee
RESOLUTION

New Mexico State University

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the New Mexico State University and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be $169,780.00 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation’s share shall be 75% or $127,335.00

and

b. New Mexico State University’s proportional matching share shall be 25% or $42,445.00

TOTAL PROJECT COST IS $169,780.00

New Mexico State University shall pay all costs, which exceed the total amount of $169,780.00.

Now therefore, be it resolved in official session that New Mexico State University determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on December 31, 2019 and the New Mexico State University incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the New Mexico State University to enter into Cooperative Agreement Project Number SP-1-19 (983) Control Number HW2 L100383 with the New Mexico Department of Transportation for LGRF Project for year 2018 - 2019 to:

1. Replace the existing pavement on Espina Street with 20-year pavement.
2. Control of requisite pedestrian traffic by installation of ADA compliant sidewalks and sidewalk entry/exit points at designated intersections.
3. Control and improvement of storm water drainage along Espina Street by addressing problems in areas of ponding.
4. Control and calm vehicle and pedestrian traffic interactions by installation of traffic calming strips at the crosswalk between Skeen Hall Parking Lot and The ASNMSU Center for the Performing Arts.
5. Control and calm vehicle traffic by the addition of day/night visible stripping on current two lane with center turn lane stripping. Due to thin pavement, milling the old stripping off was not possible and painting the old stripping did not work very well.
6. Replacement of curb and gutter where required.
The 2018 Co-Op project encompasses Espina Street north of Wells Street or station 43+15 to station 10+10 within the control of the New Mexico State University in Las Cruces, Doña Ana County, New Mexico.

Attestation:
I hereby attest that the resolution set forth above was duly approved by the Regents of New Mexico State University in a properly noticed open meeting on June 29, 2017.

___________________________________          _____________________
Dan E. Arvizu, Ph.D. DATE
Chancellor

___________________________________          DATE
Andrew J. Burke
Senior Vice President Administration and Finance
Board of Regents Meeting
Meeting Date: June 29, 2018
Agenda Item Cover Page

☑ Action Item
☐ Consent Item
☐ Informational Item

Presented By: Scott Eschenbrenner

Agenda Item: Quitclaim Deed for Property Transfer on Wisconsin Avenue

Requested Action of the Board of Regents: Approval of Quitclaim Deed, Right of Repurchase, Agreement, and Assignment of Ground Lease to transfer 0.6894 acre tract of land located at the corner of South Locust Street and Wisconsin Avenue (Aggie Car Wash) and a 1.0616 acre tract of land located at 1815 E. Wisconsin Avenue (Kids Kountry Day Care), Las Cruces, Dona Ana County, New Mexico to the New Mexico State University Foundation, Inc (NMSU-F). Provided there are no material changes to the Purchase Agreement, Real Estate Committee is requesting the Board of Regents grant authority to the Chancellor to execute closing documents. Any material changes to the Purchase Agreement will come back to the Board of Regents for approval prior to closing.

Executive Summary: The Regents of New Mexico State University (NMSU) and NMSU-F have entered into a Real Estate Purchase and Sale Agreement to transfer the above referenced real estate for $680,000. This transfer will come with a separate Right of Repurchase Agreement, Assignment of Ground Lease (Aggie Car Wash), and Quitclaim Deed conveying both parcels to the NMSU-F. The Board of Regents Real Estate Committee recommends approval and that the proceeds be set aside for future development activities in Aggie Uptown.

References:
Please refer to attached Quitclaim Deed, Assignment of Ground Lease, and Real Estate Purchase and Sale Agreement.

Prior Approvals:
June 14, 2018 – Board of Regents Real Estate Committee – Recommended approval of Quitclaim Deed property transfer.
Agenda Item Approved By:

Scott Eschenbrenner - Special Assistant to the President

Dan Arvizu - Chancellor
REAL ESTATE PURCHASE AND SALE AGREEMENT

This PURCHASE & SALE AGREEMENT (the “Agreement”) is made and entered into effective as of the date of the last signature as shown below, by and between the New Mexico State University Foundation, Inc. (Foundation) and the Regents of New Mexico State University (NMSU). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

TERM SUMMARY

The listed terms when used in this Agreement are defined as follows:

Offer Date: Monday, May 21, 2018

Buyer: New Mexico State University Foundation, Inc.

Seller: Regents of New Mexico State University

Property A (Car Wash): Approximately 0.6894 Acre Tract of land located at the corner of South Locust Street and Wisconsin Avenue, Las Cruces, Dona Ana County, New Mexico, and more particularly described on Exhibit A, attached hereto.

Property B (Day Care): Approximately 1.0616 Acre Tract of land located at 1815 E. Wisconsin Avenue, Las Cruces, Dona Ana County, New Mexico, and more particularly described on Exhibit B, attached hereto.

Purchase Price: $680,000 (Property A - $240,000; Property B - $440,000)

Closing Date: On such date after all governmental approvals have been received, no later than July 2, 2018.

1. PROPERTY

NMSU agrees to sell and the Foundation agrees to buy the Property for the Purchase Price, pursuant to the terms of this Purchase and Sale Agreement. The parties agree that if the legal description of the Property in this Agreement is not accurate, this Agreement will not be deemed invalid and the legal description will be revised in a manner acceptable to the Foundation and NMSU. The Property includes all of NMSU’s interest in the Property, including any water rights, existing leases, subleases, licenses, lease guaranties, easements, rights-of-way, streets, alleys, access rights, air rights, development rights, zoning rights and variances, and all other estates, rights, titles, interests, servitudes, tenements, and appurtenances of any nature whatsoever, in any way now or hereafter belonging to, relating to, or pertaining to the Property.
2. PURCHASE PRICE AND PAYMENT TERMS

The Foundation agrees to pay and NMSU agrees to accept as consideration for the Property, payment of a total purchase price of six hundred and eighty thousand dollars ($680,000.00). The purchase price will be paid in full at Closing.

3. USE OF THE PROPERTY

The parties agree that the following uses are unreasonable and will not be permitted within the Premises: any “second hand” store, “surplus” store, or pawn shop; any mobile home park, trailer court, labor camp, junkyard, or stockyard; any dumping, disposing, incineration or reduction of garbage; any mortuary or funeral home; any adult type book or video store or other establishment selling, displaying or exhibiting pornographic materials, nude or lewd acts, providing adult entertainment or which utilizes either live or by other means to any degree, nude or partially clothed dancers or wait staff; a flea market; any gambling facility or operation, including but not limited to: off-track or sports betting parlor, tables games such as blackjack or poker, slot machines, video poker/blackjack/keno machines or similar devices, or bingo hall; any residential drug or alcohol rehabilitation facility; and any tattoo parlor; marijuana dispensary or establishment selling or exhibiting drug related paraphernalia.

The parties agree that the foregoing restrictions will be included in the Deed conveying the property to the Foundation.

4. RIGHT OF REPURCHASE

Should the Foundation ever wish to sell or transfer all or any interest in the Premises or the improvements thereon, NMSU will have the first right to purchase the Premises in accordance with the terms of the Repurchase Agreement memorialized in a separate recorded document and in the Deed conveying the property to the Foundation.

5. DISCLOSURE & DELIVERY OF INFORMATION

Within fifteen (15) days of the effective date of this Agreement, NMSU will provide to the Foundation true, correct, and complete copies, to the extent that they are available and in NMSU’s control and possession, of the following: Previously prepared metes and bounds description and prior surveys related to the Property. NMSU makes no warranties or representations regarding the accuracy of such documents.
6. INSPECTION PERIOD

The Foundation has had an opportunity to inspect the Property, and the inspection period will continue until the date of Closing.

7. BUYER’S OBJECTION

Prior to the end of the inspection period, the Foundation may disapprove the Property and any item related to the Property. In such event, the Foundation, at the Foundation’s election, may either terminate this Agreement or give notice to NMSU with an opportunity for NMSU to cure the items disapproved by the Foundation.

8. SELLER’S REPRESENTATIONS & WARRANTIES

Subject to the express representations and warranties of NMSU set forth in this Agreement, if any, the Property is being sold in an AS IS, WHERE IS condition, and with all faults as of the date of this Agreement and the date of Closing. Except as expressly set forth in this Agreement, no representations or warranties have been made or are made, and no responsibility has been or is assumed by NMSU or by any person, agent, attorney, or representative acting or purporting to act on behalf of NMSU as to the condition of the property, compliance with laws, zoning, water, soil, access size, marketability, value, future value, utilities, or otherwise. All implied warranties, including but not limited to any implied warranty of habitability, merchantability, and fitness for a particular purpose are disclaimed under this Agreement.

9. POSSESSION & TITLE TO PROPERTY

NMSU agrees to allow and provide the Foundation possession of the Property immediately upon Closing. At Closing, NMSU will transfer title to the Property to the Foundation, via a Quitclaim Deed, along with an assignment of Ground Lease for Property A.

10. CLOSING

Closing will occur on or before the Closing Date at Hadley Hall, Office of the President, 2850 Weddell Road, Las Cruces, New Mexico 88003. If the City of Las Cruces or Dona Ana County requires subdivision of the property, then those expenses will be shared fifty percent (50%) to the Foundation and fifty percent (50%) to NMSU, with NMSU’s share to be deducted from the purchase price. Title insurance or survey will not be obtained or provided. NMSU will be responsible for recording the Quitclaim Deed. No other closing costs are anticipated.
11. AUTHORITY

NMSU and the Foundation each warrant that they have obtained approval from their respective governing boards to enter into this transaction and that the individuals signing on behalf of each entity have authority to execute this agreement, and that upon signing, this Agreement shall be binding and enforceable against each of them.

NOW, THEREFORE, by placing their signatures upon this Agreement, the parties agree to the terms and conditions set forth in this Agreement, as of the date indicated below.

Regents of New Mexico State University

Dan Arvizu, Chancellor

Date: 

New Mexico State University Foundation, Inc.

Andrea Tawney, Vice President

Date: 

NMSU Foundation Purchase and Sale Agreement – 6/29/2018

06/28/2018

Page 63 of 78
QUITCLAIM DEED

REGENTS OF NEW MEXICO STATE UNIVERSITY (as “Grantor”), whose mailing address is MSC 30RE, P.O. Box 30001, Las Cruces, NM 88003, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby quitclaims to the NEW MEXICO STATE UNIVERSITY FOUNDATION (as “Grantee”), whose mailing address is P.O. Box 3590, Las Cruces, NM 88003-3590, all of Grantor’s right, title, and interest in the parcels of land, situate, lying, and being in the City of Las Cruces, County of Dona Ana, State of New Mexico, more particularly described on Exhibit A and B attached hereto.

SUBJECT TO and reserving to Grantor an unassignable reversionary first right to repurchase the Premises prior to Grantee selling, transferring, or otherwise conveying any interest in the Premises or improvements constructed thereon (the “Repurchase Right”) with the terms of the Repurchase Right described in a separate instrument, to be separately recorded, and a copy of which is attached to this deed as Exhibit C.

FURTHER SUBJECT TO the following covenants, conditions, and restrictions, which by acceptance of this Deed, Grantee agrees to and accepts:

A. The Premises may be used for any lawful use deemed appropriate by the Grantee, so long as said use is not unreasonable, as it is defined below. The parties agree that the following uses are unreasonable and will not be permitted within the Premises: any “second hand” store, “surplus” store, or pawn shop; any mobile home park, trailer court, labor camp, junkyard, or stockyard; any dumping, disposing, incineration or reduction of garbage; any mortuary or funeral home; any adult type book or video store or other establishment selling, displaying or exhibiting pornographic materials, nude or lewd acts, providing adult entertainment or which utilizes either live or by other means to any degree, nude or partially clothed dancers or wait staff; a flea market; any gambling facility or operation, including but not limited to: off-track or sports betting parlor, tables games such as blackjack or poker, slot machines, video poker/blackjack/keno machines or similar devices, or bingo hall; any residential drug or alcohol rehabilitation facility; and any tattoo parlor; marijuana dispensary or establishment selling or exhibiting drug related paraphernalia.

B. Grantor will not purchase a title policy or title commitment for Grantee, and Grantee shall be solely responsible for the costs of said policy or commitment if Grantee chooses to purchase either.

C. Grantor is delivering to Grantee the Premises “as-is” and “with all faults.”

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.]
IN WITNESS WHEREOF, the Grantor, acting through its duly authorized agent, signs this deed on the day and year set forth below.

BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY

_______________________________  ________________________________
Dan E. Arvizu, Chancellor                  Date

STATE OF NEW MEXICO
COUNTY OF DONA ANA

This instrument was acknowledged before me on __________, 2018, by Dan E. Arvizu, as Chancellor of New Mexico State University.

_______________________________
Notary Public

My commission expires:
April 11, 1990

DESCRIPTION OF A 0.6894 ACRE TRACT

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in Section 21, T.23S., R.2E., N.M.P.M. of the U.S.R.S. Surveys as part of Block 61, College Park Addition as filed August 1909, in plat Record 3, Page 55 of the Dona Ana County Records, and being more particularly described as follows, to wit:

BEGINNING at an iron rod at the southwest corner of this tract at the northeast intersection of Locust Street and Wisconsin Avenue, whence the southeast corner of Block 61, College Park Addition bears N.77°25'40"E., a distance of 360.16 feet;

THENCE from the place of beginning and following along the easterly right-of-way line of Locust Street N.22°24'43"W., 144.00 feet to an iron rod at the northwest corner of this tract;

THENCE leaving Locust Street N.67°35'17"E., 202.59 feet to an iron rod at the northeast corner of this tract;

THENCE S.12°34'20"E., 176.50 feet to an iron rod on the north line of Wisconsin Avenue for the southeast corner of this tract;

THENCE along Wisconsin Avenue S.77°25'40"W., 175.00 feet to the place of beginning, containing 0.6894 acres (30030 square feet) of land more or less. Subject to easements of record. Filed notes by Botsford Land Surveying, Inc.

#900143
This recording information does not pertain to the March 8, 2010 Lease, it pertained to the previous lease that expired 11-30-1999.

Located in Section 27, T.23S., R.2E., P.H., U.S.A.S. SURVEYS
Part of Block 61, College Park Addition
As filed August, 1999 in Plat Records 1, Page 53 of the Doña Ana County Records
Scale: 1" = 100'

State of New Mexico
County of Doña Ana
Receipt for
A hereby certify that the instrument was filed for recording and duly recorded on
April 19, 2000
A copy of this instrument is on file in the Office of the County Clerk of Doña Ana County,
New Mexico

EXHIBIT "A"

Subject property is not in a flood zone as per flood insurance rate maps of the city of Las Cruces dated January 30, 1994.

Dated: 6-28-2018

[Signature]

[Stamp]

Batesford Land Surveying, P.
222 S. Drive
Las Cruces, NM 88001
DESCRIPTION OF A 1.0616 ACRE TRACT

A tract of land situated within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico in Section 21, T.23S., R.2E., N.M.P.M. of the U.S.R.S. Surveys as part of Block 61, College Park Addition as filed August 1909 in Plat Record 3, Page 55 of the Dona Ana County Records and being more particularly described as follows:

BEGINNING at an iron rod set on the north line of Wisconsin Avenue and the west line of Emile Drive for the southeast corner of this tract, identical to the southeast corner of Block 61, College Park Addition;

THENCE from the place of beginning along the north line of Wisconsin Avenue S.77°25'40"W., 185.16 feet to a chiseled "X" on a wall at the southwest corner of this tract, identical to the southeast corner of a 0.6894 acre tract previously conveyed;

THENCE following partially along the wall N.12°34'20"W., 176.50 feet to an iron rod set at the northeast corner of the 0.6894 acre tract;

THENCE continuing N.12°34'20"W., 73.20 feet to an iron rod set on the south line of Illinois Avenue for the northwest corner of this tract;

THENCE along the south line Illinois Avenue N.77°25'40"E., 185.23 feet to an iron rod set at the northeast corner of this tract, identical to the northeast corner of Block 61 and the southwest intersection of Illinois Avenue and Emile Drive;

THENCE along the west line of Emile Drive S.12°33'25"E., 249.71 feet to the place of beginning containing 1.0616 acres (46,244 square feet) of land, more or less. Subject to easements of record. Field notes by Botsford Land Surveying, Inc.

#30042/January 1993

I hereby certify that this land description was prepared by me or under my supervision.

James A. Botsford, NMPS #5211

BOTSFORD LAND SURVEYING INC.
210 South Water
Las Cruces, New Mexico 88001
505 529-2444
RIGHT OF REPURCHASE

This Right of Repurchase is being entered into as of the date of final signature below, by and between the **NEW MEXICO STATE UNIVERSITY FOUNDATION, INC.** (Foundation) with an address of P.O. Box 3590, Las Cruces, New Mexico 88003-3590, and the **REGENTS OF NEW MEXICO STATE UNIVERSITY** (NMSU) with an address of MSC 3045, P.O. Box 3001, Las Cruces, New Mexico 88003.

WHEREAS, NMSU has agreed to sell two (2) parcels of land (Premises) to the Foundation, which are more particularly described on Exhibits A and B attached hereto; and

WHEREAS, as a condition to the conveyance of the Premises under the Deed recorded at document number __________ in the real property records of Dona Ana County, New Mexico (the “Deed”), NMSU reserved a reversionary right to repurchase the Premises and the improvements thereon (the “Repurchase Right”);

WHEREAS, the Foundation and NMSU desire to set forth the terms and conditions of the Repurchase Right;

NOW, THEREFORE, the Foundation and NMSU, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree to the following terms and conditions for the Repurchase Right reserved by NMSU in the Deed:

(1) Should the Foundation ever wish to sell or transfer all or any interest in the Premises or the improvements thereon, NMSU shall have the first right to purchase the Premises.

(2) Prior to either offering for conveyance or accepting any offer to purchase any interest in the Premises or the improvements thereon, the Foundation shall notify NMSU in writing of its desire to do so, including a description of what interest in the Premises would be conveyed and the terms and conditions of such conveyance (the “Notice”).

(3) Both parties agree to negotiate in good faith in order to determine the price to be paid for the Premises, upon exercise of the right of repurchase. If the parties cannot agree on a price for the Premises, NMSU will, at its sole cost and expense, select an MAI Certified Appraiser to appraise the Premises. The fair market value of the Premises, as set by the Appraiser, will be the price to be paid upon repurchase, unless the Foundation notifies NMSU within fifteen (15) days of its intention to obtain a second appraisal from an MAI Certified Appraiser of its choosing. The Foundation will bear the entire cost and expense of the second appraisal. If the Foundation obtains a second appraisal, the price for the Premises will be the average of the two appraisals.

(4) NMSU will have a period of fifteen (15) days from either receipt of the second appraisal, or the expiration of the period in which the Foundation could give notification of intent to obtain a second appraisal (as expanded in accordance with the provisions of this Section 3, the “Exercise Period”), in which to exercise the Repurchase Right in the Premises. NMSU shall have the right to repurchase the Premises in its entirety, as improved, even if the Notice describes a lesser interest being offered by the Foundation. If the end of the fifteen (15) day
period falls on a Saturday or Sunday, or a Federal or State holiday in which New Mexico State University is closed, NMSU shall be allowed as many additional days as is necessary in order to reach the next closest business day.

(5) If NMSU does not provide notice of their intent to exercise their Repurchase Right within the Exercise Period, the Foundation shall be free to convey the Premises in accordance with the description in the Notice; provided that, if the Foundation has not conveyed the Premises in accordance with the terms of the Notice within 180 days after providing the Notice, the Foundation’s right to convey pursuant to that Notice shall be void, and any conveyance thereafter shall require compliance with the notice provisions and other terms of this Right of Repurchase. Further, should the Foundation amend or modify the terms as described in the Notice after NMSU’s Exercise Period, then such modified or amended offer or contract, as the case may be, shall constitute a new offer hereunder and NMSU’s Repurchase Right shall apply thereto, obligating the Foundation to comply with the notice provisions and other terms of this Right of Repurchase.

(6) If NMSU provides notice of its exercise of the Repurchase Right within the Exercise Period, the Foundation and NMSU shall close such repurchase within thirty (30) days of NMSU’s delivery of its notice to exercise.

(7) The Foundation shall convey the Premises to NMSU by special warranty deed with statutory special warranty covenants.

(8) Both parties agree that the Foundation shall incur no title company closing costs, nor purchase for NMSU any title commitments or policies procured in the sale of the Premises pursuant to this Repurchase Right. Each party hereunder shall bear its own costs associated with performance of the terms of this Right of Repurchase, including without limitation, attorney’s fees.

(9) Should either party choose to obtain a title commitment or other insurance policy, the party so choosing shall bear all costs and expenses associated with said commitment or policy.

(10) Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, deposited with any nationally recognized overnight courier service for next business day delivery, or sent by registered or certified mail, postage prepaid, return receipt requested and addressed to the addresses set forth above or to such other address as the party concerned may substitute by written by written notice to the other.

(11) This Right of Repurchase shall run with the Premises, and the benefit of this Right of Repurchase shall be held in gross by NMSU.

(12) Unenforceability of any provision contained in this Right of Repurchase shall not affect or impair the validity of any other provisions hereof. If a court of competent jurisdiction finds any provision of this Right of Repurchase unenforceable, such court shall reform the
remainder of the terms of this agreement so that the remaining provisions operate to carry out the original intent of the parties hereto as closely as possible without violation of law.

(13) Each of the parties agrees to take or cause to be taken such further actions to execute, deliver and file or cause to be executed, delivered and filed such further documents, and will obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Right of Repurchase.

(14) This Right of Repurchase and the Deed are the final agreement of the parties hereto with regard to the subject matter herein, superseding all prior agreements, whether written or oral. This Right of Repurchase shall only be amended by a document in writing, signed by an authorized representative of both parties.

IN WITNESS WHEREOF, the parties, acting through their duly authorized agents, have each signed this Right of Repurchase Agreement on the day and year set forth below.

NEW MEXICO STATE UNIVERSITY FOUNDATION, INC.  

Andrea Tawney, Vice President

Date: __________________________

REGENTS OF NEW MEXICO STATE UNIVERSITY

Dan E. Arvizu, Chancellor

Date: __________________________

STATE OF NEW MEXICO  
COUNTY OF DONA ANA

The foregoing instrument was acknowledged before me on ____________, 2018, by Andrea Tawney, as Vice President of the New Mexico State University Foundation, Inc.

__________________________________________
Notary Public

My commission expires:

STATE OF NEW MEXICO  
COUNTY OF DONA ANA

The foregoing instrument was acknowledged before me on ____________, 2018, by Dan E. Arvizu, Chancellor of New Mexico State University.

__________________________________________
Notary Public

My commission expires:
EXHIBIT "A"

April 11, 1990

DESCRIPTION OF A 0.6894 ACRE TRACT

A tract of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in Section 21, T.23S., R.2E., N.W.P.M. of the U.S.R.S. Surveys as part of Block 61, College Park Addition as filed August 1909, in plat Record 3, Page 53 of the Dona Ana County Records, and being more particularly described as follows, to wit:

BEGINNING at an iron rod at the southwest corner of this tract at the northeast intersection of Locust Street and Wisconsin Avenue, whence the southeast corner of Block 61, College Park Addition bears N.77°25'40"E., a distance of 350.16 feet;

THENCE from the place of beginning and following along the easterly right-of-way line of Locust Street N.22°24'43"W., 144.00 feet to an iron rod at the northwest corner of this tract;

THENCE leaving Locust Street N.67°35'17"E., 202.59 feet to an iron rod at the northeast corner of this tract;

THENCE S.12°34'20"E., 176.50 feet to an iron rod on the north line of Wisconsin Avenue for the southeast corner of this tract;

THENCE along Wisconsin Avenue S.77°25'40"W., 175.00 feet to the place of beginning, containing 0.6894 acres (30030 square feet) of land more or less. Subject to easements of record. Field notes by Botsford Land Surveying, Inc.

#900143

BOTSFORD LAND SURVEYING INC.
212 S. Downtown Mall
Las Cruces, New Mexico 88001
(505) 520-2444

10-17
DESCRIPTION OF A 1.0616 ACRE TRACT

A tract of land situate within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico in Section 21, T.23S., R.2E., N.M.P.M. of the U.S.R.S. Surveys as part of Block 61, College Park Addition as filed August 1989 in Plat Record 3, Page 55 of the Dona Ana County Records and being more particularly described as follows:

BEGINNING at an iron rod set on the north line of Wisconsin Avenue and the west line of Enzie Drive for the southeast corner of this tract, identical to the southeast corner of Block 61, College Park Addition;

THENCE from the place of beginning along the north line of Wisconsin Avenue S.77°25'40"W., 185.16 feet to a chisled "X." on a wall at the southwest corner of this tract, identical to the southeast corner of a 0.6894 acre tract previously conveyed;

THENCE following partially along the wall N.12°34'20"W., 176.50 feet to an iron rod set at the northeast corner of the 0.6894 acre tract;

THENCE continuing N.12°34'20"W., 73.20 feet to an iron rod set on the south line of Illinois Avenue for the northwest corner of this tract;

THENCE along the south line Illinois Avenue N.77°25'40"E., 185.23 feet to an iron rod set at the northeast corner of this tract, identical to the northeast corner of Block 61 and the southwest intersection of Illinois Avenue and Enzie Drive;

THENCE along the west line of Enzie Drive S.12°33'25"E., 249.71 feet to the place of beginning containing 1.0616 acres (46,244 square feet) of land, more or less. Subject to easements of record. Field notes by Botsford Land Surveying, Inc.

#930042A/January 1993

I hereby certify that this land description was prepared by me or under my supervision.

James A. Botsford, N.M.P.S. #5211

BOTSFORD LAND SURVEYING INC.
Page 74 of 78 310 South Water
Las Cruces, New Mexico 88001 (505) 528-2444
06/28/2018
ASSIGNMENT OF GROUND LEASE

This Assignment of Ground Lease is made as of the date of signature below, by and between the REGENTS OF NEW MEXICO STATE UNIVERSITY (as “Assignor”), whose mailing address is MSC 3ORE, P.O. Box 30001, Las Cruces, NM 88003, for the benefit of the NEW MEXICO STATE UNIVERSITY FOUNDATION (as “Assignee”), whose mailing address is P.O. Box 3590, Las Cruces, NM 88003-3590.

WHEREAS, Assignor, as Lessor, entered into that certain Ground Lease agreement, dated March 8, 2010, with Stephen Loman and Max Schroeder d/b/a Fiesta Properties (“Fiesta”), as Lessee, for a term of five (5) years;

WHEREAS, Assignor entered into a First Lease Extension with Fiesta, dated March 30, 2015, for a term of two (2) years;

WHEREAS, Assignor entered into a Second Lease Extension with Fiesta, dated February 6, 2016, for an additional term of six (6) years, including a subsequent optional extension period of five (5) years;

NOW THEREFORE, Assignor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby transfers and assigns unto Assignee, all of Assignor’s right, title and interest in that certain lease agreement, including all extensions thereto, as attached hereto and incorporated herein for reference.

Further, Assignor hereby delegates to Assignee, all of the duties and obligations required under that certain lease agreement. Assignee hereby assumes and agrees to timely perform all Assignor obligations under the lease. If Assignee or their successors default in performance of this assumption and Assignor not be released from Assignor liability on the lease, the amount of the default will be a lien in favor of Assignor on the interest transferred. Assignee will indemnify Assignor against any claim, liability, loss, costs, attorneys fees, and other damages incurred by Assignor under the assigned lease.

IN WITNESS WHEREOF, the Assignor, acting through its duly authorized agent, signs this Assignment of Ground Lease on the day and year set forth below.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.]
IN WITNESS WHEREOF, the Assignor, acting through its duly authorized agent, signs this Assignment of Ground Lease on the day and year set forth below:

NEW MEXICO STATE UNIVERSITY FOUNDATION, INC.  REGENTS OF NEW MEXICO STATE UNIVERSITY

Andrea Tawney, Vice President  Dan E. Arvizu, Chancellor

Date: ______________________  Date: ______________________

STATE OF NEW MEXICO  COUNTY OF DONA ANA

The foregoing instrument was acknowledged before me on __________________, 2018, by Andrea Tawney, as Vice President of the New Mexico State University Foundation, Inc.

________________________
Notary Public

My commission expires:

STATE OF NEW MEXICO  COUNTY OF DONA ANA

The foregoing instrument was acknowledged before me on __________________, 2018, by Dan E. Arvizu, as Chancellor of New Mexico State University.

________________________
Notary Public

My commission expires:
April 11, 1990

DESCRIPTION OF A 0.6894 ACRE TRACT

A tract of land situated within the corporate limits of the City of Las Cruces, Doña Ana County, New Mexico in Section 21, T.23S., R.2E., N.H.P.M. of the U.S.R.S. Surveys as part of Block 61, College Park Addition as filed August 1909, in plat Record 3, Page 53 of the Doña Ana County Records, and being more particularly described as follows, to wit:

BEGINNING at an iron rod at the southwest corner of this tract at the northeast intersection of Locust Street and Wisconsin Avenue, whence the southeast corner of Block 61, College Park Addition bears N.77°25'40"E., a distance of 360.16 feet;

THENCE from the place of beginning and following along the easterly right-of-way line of Locust Street N.22°24'43"W., 144.00 feet to an iron rod at the northwest corner of this tract;

THENCE leaving Locust Street N.67°35'17"E., 202.59 feet to an iron rod at the northeast corner of this tract;

THENCE S.12°34'20"E., 176.50 feet to an iron rod on the north line of Wisconsin Avenue for the southeast corner of this tract;

THENCE along Wisconsin Avenue S.77°25'40"W., 175.00 feet to the place of beginning, containing 0.6894 acres (30030 square feet) of land more or less. Subject to easements of record. Field notes by Botsford Land Surveying, Inc.

#900143

BOTSFORD LAND SURVEYING INC.
212 S. Downtown Mall
Las Cruces, New Mexico 88001
(505) 525-2444
This recording information does not pertain to the Lease, it pertained to the previous lease that expired 11-30-1999.

Subject property is not in a flood zone as per flood insurance rate maps of the city of Las Cruces dated January 30, 1994.

[Diagram and signatures]