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Board of Regents Meeting Minutes

University of New Mexico Board of Regents

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11-9-1995

# University of New Mexico Board of Regents Minutes for November 09, 1995

University of New Mexico Board of Regents

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**THE MINUTES OF THE MEETING OF**  
**THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**

**November 9, 1995**

The Regents of the University of New Mexico met on Thursday, November 9, 1995, in the Roberts Room of Scholes Hall. A copy of the public notice of the meeting is on file in the Office of the President.

Regents Present:

Arthur D. Melendres, President  
Penny Taylor Rembe, Vice President  
Barbara G. Brazil, Secretary  
J.E. (Gene) Gallegos  
Mary A. Tang  
Eric A. Thomas  
Larry D. Willard

Also Present:

Advisors to the Regents

Harry Llull, President, Faculty Senate  
Velma Morgan, President, Staff Council  
Barney Navas, Senator, representing Associated Students of UNM  
Michelle Polk, President, Alumni Association  
Ray Sharbutt, President, Graduate and Professional Students Association

Members of the Administration, the media and others

Absent:

Alberto Solis, President, Associated Students of UNM  
Wayne Davenport, President, UNM Foundation

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Regent President Arthur D. Melendres called the meeting to order at 2:10 p.m.

**EXECUTIVE SESSION -- LIMITED PERSONNEL MATTERS PURSUANT TO SECTION 10-15-1-H.(2), NMSA, 1978 (OCTOBER 31, 1995)**

Regent President Melendres and Regents Mary A. Tang, Eric A. Thomas and Larry D. Willard attested that they attended the Executive Session on October 31, 1995, from 12 noon to 3:30 p.m., which constituted a quorum of the Board, and they affirmed that the only items discussed at the meeting was limited personnel matters as noticed.

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**EXECUTIVE SESSION -- LIMITED PERSONNEL MATTERS PURSUANT TO SECTION 10-15-1-H.2, NMSA, 1978 (NOVEMBER 9, 1995)**

The Regents present met in Executive Session immediately before the Board meeting on limited personnel matters and attested that the only items discussed at the meeting were limited personnel matters as noticed.

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**ADOPTION OF AGENDA**

Regent J.E. (Gene) Gallegos moved adoption of the agenda as modified: he said Finance and Facilities Committee Items VII.B. and VII.D will be presented by the same personnel and moved to hear them at the same time. Regent Penny Taylor Rembe seconded the motion.

Voice vote was taken and Board members unanimously approved.

Motion carried.

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**PUBLIC INPUT REGARDING ITEMS ON THE AGENDA**

There was no public input at the meeting.

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**APPROVAL OF SUMMARIZED MINUTES OF THE OCTOBER 13, 1995 MEETING**

Regent Rembe moved approval of the summarized minutes of the October 13, 1995, meeting. Regent Thomas seconded the motion.

Voice vote was taken and Board members unanimously approved.

Motion carried.

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**ADMINISTRATIVE REPORT --UNM PRESIDENT RICHARD E. PECK**

University Richard E. Peck presented the administrative report as follows:

**Racist Flyers on Campus**

President Peck said a racist flyer was inserted in approximately 20 copies of the Daily Lobo after the newspaper had been placed in distribution boxes. The Daily Lobo came out with a strong editorial opposing the actions. The President said a forum was held the previous night on campus, and he agrees with the students who are outraged to have this happen here. He said this matter is under investigation and the University will involve other law enforcement agencies if it becomes apparent they have jurisdiction. The information already collected has been turned over to the District Attorney's Office. He said that on Thursday, November 16, at 3 p.m., he and the new Vice President for Student Affairs, Eliseo Torres, will hold a session for all students who would like to offer suggestions as to what the University can do. There are University rules that the hate mail violates, and if people are caught, the University will provide the kind of administrative discipline that it can. He said the entire University community abhors this kind of language and this kind of attack on any individual, and added that the Faculty Senate recently came out in very strong support of the administration's position on affirmative action.

**Convenio with University of Guadalajara and Texas Tech**

Recently, UNM signed a *convenio* with the University of Guadalajara and Texas Tech University. A new master's in international law will be taught at all three universities--half of it at the University of Guadalajara, a quarter of it at UNM, and one quarter at Texas Tech. This is one of the first multi-national degree issued jointly by institutions in two different countries. UNM already has a master's in education that it offers with the University of

Guadalajara.

### NCAA Drug Testing

The NCAA has been doing drug testing for several years. They appear at a university, select names from a list of scholarship athletes, and perform drug tests. This is a random selection, the timing is never known, and is the kind of surprise visit that is likely to catch people who are using drugs. In the last four years, there have been 9-10 visits at UNM; recently, 18 athletes were tested, and all were negative for drug use. President Peck said the University had only once had a single athlete show positive for a drug (marijuana), and steroids have never shown up at UNM. He congratulated the Athletic Department for keeping the program clean.

### Funding Requirements Document

President Peck thanked Dr. Lee Zink, Associate Vice President for Research/Business and Government Relations, for writing him a letter commending the Funding Requirements Document. Dr. Zink said the document is the best he has seen in his 28 years at UNM and presents the University's budget request in a clearly understandable way. President Peck commended Julie Weaks, Budget Director, who put the document together under the supervision of Vice President for Business and Finance David L. Mc Kinney.

### UNM Annual Report

President Peck said the first-time Annual Report from the University has drawn positive comments from many people. Former Regent and President of the American Bar Association Roberta Cooper Ramo has shared it with the ABA with a request that they try to do something like it.

### National Research Council Rankings

President Peck followed up on the National Research Council (NCR) survey which omitted UNM from the rankings of many graduate programs. He said that Dr. Ellen Goldberg, Associate Provost/Dean of Graduate Studies, has found a possible solution. She has checked the NCR publication rankings against the rankings in U.S. News and World Report and in all instances where a university appears in both lists, the ranking is basically the same. UNM has been ranked in the U.S. News and World Report survey, and if the University can distribute that and make clear to people that it is apparently the same ranking that the University would have achieved in the NCR survey, some of the damage will be mitigated.

### Deans of Arts & Sciences Conference

The national conference for deans of Arts and Sciences is presently being held in Albuquerque. When plans were being made four years ago, it was expected that 400 deans would attend, which is their usual attendance. The conference has a very big turnout with 600 deans attending.

### Provost Search

President Peck updated the Regents on the search. The Faculty Senate recently ran a survey of approximately 1600 faculty members whose opinions were sought on whether (1) there should be an internal search, (2) an internal search for an interim only, (3) a search that led to an interim to be followed up in a specified period of time with a national search, and (4) "I don't care." About 540 responses were received--44% (15% of the entire faculty) would prefer a national search; the combination of categories 2 and 3, lean toward an internal search, but with a disagreement as to whether that should be permanent or followed with a national search. President Peck the University has started an internal search and some nominations have already been received. He said there are a number of faculty members at UNM who are qualified to be provost at any university in the country and that he had no doubt a search would turn them up. He said the University will accept only the sort of scholar and academic who would win through a national search anyway, and if the search does not turn up that person of national stature, UNM will then go to a national search.

In response to an inquiry by Regent Tang, President Peck explained why he believes an internal search would be more beneficial to the University. He said UNM needs to establish continuity and stability. In the President's five-year tenure at UNM, there have been five different provost appointments. Continuity, and the fact that a national search would cost \$50,000-70,000 in a year when the institution has just faced budget cuts, led to his decision. With a national search, a new provost might be in place by July. With the internal search, the hope is that a new provost will be identified early enough represent the University and faculty at the legislative budget hearings in January.

President Peck concluded his report.

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### COMMENTS FROM REGENTS' ADVISORS

Harry Llull, President, Faculty Senate

Professor Harry Llull expressed concern that because of the controversy on conducting an internal search instead of a national one, qualified people may be reluctant to submit their names for consideration as provost. President Peck said he has received about nine nominations so far. He said these are people who do not have to apply because their colleagues have nominated them out of respect, and he believes most of them could be persuaded to be considered for the position. The President added that he believes the difference between applying and allowing yourself to be nominated may cover some of the discomfort that some people might otherwise have. Regent President Melendres said that the internal search was begun with his support.

The post-tenure review survey has gone out to all faculty and will be discussed in November and at an open forum on December 5.

The group started by Professor Llull of Faculty Senate Presidents from the six 4-year institutions continues. Professor Llull is hopeful that the group will portray to the Legislature and the entire New Mexico community that the institutions are not competing with one another, but are working together on common interests.

Velma Morgan, President, Staff Council

The Staff Council is putting together a committee that will work in unison with the University's lobbyist during the Legislative session.

Barney Navas, Senator, Associated Students of UNM

ASUNM Senator Barney Navas addressed the Regents on behalf of President Alberto Solis and ASUNM. Mr. Navas said ASUNM officers denounce the racist leaflet that was attempted to be circulated on campus two days ago, adding that they feel that this is an act of narrowmindedness and ignorance. Mr. Navas said that although it is difficult to capture the culprit who did this, this cannot be treated as an isolated incident, because isolated incidents, once they are grouped, become trends. He said the tone of the University has always been one of community and inclusion, and unfortunately this type of leaflet creates fear and segregation. Mr. Navas said the Senate is developing a resolution against acts such as this. He asked for continued support of the Regents, administrators and the faculty for having an environment that is safe and productive for all current and future students.

Mr. Navas congratulated Provost Mary Sue Coleman for her appointment to the presidency at the University of Iowa, and thanked her for her assistance during her tenure at UNM.

Ray Sharbutt, President, Graduate and Professional Students Association

Mr. Sharbutt thanked Regents Brazil and Thomas for attending the GPSA Council meeting on Saturday.

He said GPSA discussed the provost search and there was a very strong consensus that the University should proceed with an internal search at this time, but that it should be for a certain term, and that whoever fills the position could be a candidate in a national search.

Last month GPSA awarded about \$16,000 in student research allocations to approximately 74 graduate students. Mr. Sharbutt said GPSA received 156 applicants, and went through a process of ranking each of the proposals.

GPSA is working with the Office of Graduate Studies on healthcare for graduate students. Mr. Sharbutt said that presently the only healthcare available for graduate students who can't afford health insurance for a family is indigent care at UNM Hospital.

Mr. Sharbutt said GPSA is considering using I-Tel UNM for the graduate student elections. He hopes to increase voter participation by using I-Tel UNM.

Michelle Polk, President, Alumni Association

The Alumni Association's Community Outreach Program orientation is scheduled for this weekend. The program was created to develop avenues of greater awareness between UNM and New Mexico communities. Six communities/liaisons have been added to the seven put in place last year.

Alumni continue to assist the University in student recruitment by representing the University at various college fairs across the country and in Italy. The total number of college fairs being handled by alumni this fall is 24. This provides invaluable dividends to UNM in terms of cost savings and having UNM represented at college fairs where it would not otherwise be showcased.

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TELEMEDICINE JOINT POWERS AGREEMENT

The Joint Powers Agreement is between the Regents of the University of New Mexico and Guadalupe County Hospital for joint operation and maintenance of a telemedicine system,



as well as transfer of ownership of equipment being purchased by each entity and being installed at the other entity's site. The statute governing joint powers agreements requires approval by the Board of Regents.

In response to an inquiry by Regent Tang, Dr. Paul Roth, Dean of the School of Medicine, explained that telemedicine is a way through telecommunications to connect a variety of the University's programs with practicing physicians, in this case in Santa Rosa. The project would include real-time interactive TeleVideos which would provide a direct link between the emergency room in the Guadalupe County Hospital and the emergency department at University Hospital. Dr. Roth said there would also be the capability of transmitting certain diagnostic information. Additionally, UNM will try to make certain educational programs available through a direct TeleVideo capability, electronic mail and literature, and library access.

Regent Rembe moved approval of the Resolution of the Board of Regents authorizing the Telemedicine Joint Powers Agreement. Regent Brazil seconded the motion.

Voice vote was taken and Board members unanimously approved.

Motion carried.

Copies of the Resolution and Joint Powers Agreement are hereby made a part of these minutes as Exhibit A.

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#### EXTERNAL AUDITOR'S REPORT

Regent Gallegos said the Finance and Facilities Committee received the audit which was conducted by Neff & Company, and was fully advised concerning the scope and the procedures of the audit. The Finance and Facilities Committee, functioning as an audit committee for the Board, had a closed session in which any members of the administration were excluded, so the committee would have an opportunity to speak with the auditors to ascertain that they had the cooperation of the University and had made available to them all that was necessary for them to conduct the audit. The Finance and Facilities Committee has satisfied itself concerning the audit and the acceptability of it.

Ms. Kharyn Cover, representing Neff & Company, said there were no significant findings this year, and two of the three findings were a repeat from prior years. Ms. Cover explained

that one of the repeated findings, "Receipt of Purchased Goods," is likely to remain until facilities become available to make this more practical. The other repeated finding, "Reconciliation of Student Loans," appears to be a problem with documentation at the New Mexico Educational Assistance Foundation. Regarding the new finding, "Federal Financial Reports," Ms. Cover said that in most instances, the financial reports for federal grant programs were filed a day or two late. She said one of them was substantially late, but it appears the delay was due to unavoidable circumstances. The cognizant agent was aware of the situation and there do not appear to be any ramifications because of the delay, but as they do affect federal funds, they are required to be reported.

Ms. Cover said the financial statements are consistent with what they have been in the past with a couple of slight changes. Regarding the component units, last year there was a pronouncement by the Governmental Accounting Standards Board stating that all organizations related to the University financially or under the administrative control of the University needed to be added into the financial statements in order to get a complete view of what the University itself was doing. Therefore, for the first time, Neff & Company added a number of component units to the financial statements that had not been presented in the past (such as UNM Foundation, University Physician's Associates, Lobo Club, etc.). Last year, the UNM Hospital and the Mental Health Center had also been included in the category as component units, but this year they are included with the total University and presented in the unrestricted current funds, consistent with the way things had been prior to the component unit pronouncements made last year.

Ms. Cover said that Neff & Company did not audit the financial statements of the various components of the University, the University Hospital or the UNM Community Mental Health/Mental Retardation Center which statements reflect total assets and revenues of 19 percent and 28 percent, respectively of the combined totals. Those statements were audited by other auditors whose report was furnished to Neff & Company and, in its opinion, insofar as it relates to the amounts included, is based solely on the reports of the other auditors.

Regent Gallegos moved to accept the recommendation of the Finance and Facilities Committee to accept the external auditor's Annual Financial Report of the University of New Mexico: June 30, 1995. Regent Thomas seconded the motion.

Voice vote was taken and Board members unanimously approved.

Motion carried.

A copy of the External Auditor's Report is available in the UNM Controller's Office.

000346

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1994-95 ANNUAL ENDOWMENT INVESTMENT PROGRAM REPORT

AND

EQUITY MANAGERS SELECTION

Mr. James B. Mulcock, Jr., Chair of the Endowment Investment Committee, and Mr. Chuck Vickers, Endowment Manger at UNM, presented the 1994 Annual Endowment Investment Program Report and the Equity Managers Selection to the Board.

1994-95 Annual Endowment Investment Program Report

Mr. Mulcock expressed his appreciation to the Endowment Investment Committee for their dedication and commitment to the program.

Mr. Mulcock said that at the beginning of Fiscal Year 1994-95, the beginning balance of the Consolidated Investment Fund (CIF) was \$95,966,191. Through contributions and endowments, the net addition to principal was \$5,304,445. The total investment revenue during the year was \$15,856,418. The spendable income allocation of \$4,981,089 went to the beneficiaries of the investment fund. The institutional support allocation was \$497,191. On June 30, 1995, the Consolidated Investment Fund reached a milestone, surpassing the \$100 million mark in total assets, which moved UNM into the top 150 of colleges and universities nationally in terms of endowment assets.

Regent Gallegos complimented the Investment Committee for their excellent work in providing such a detailed report, and said he would like the Regents to communicate their appreciation for the valuable work they provide.

In answer to a question by Regent Tang, Mr. Vickers explained that the distribution itself of the income in based on donor directives. Regent Gallegos added that this applies only to endowment gifts.

Equity Managers Selection

In 1991, the UNM/UNM Foundation investment program was fully implemented with the selection of external, professional investment managers. The original four-year contract period for the managers expired on June 30, 1995, though the contracts provided an option

for one-year renewals. In the Spring of 1995, the UNM Foundation, Inc. Investment Committee voted to extend the original contracts for one year and to begin a full and open search process for the domestic equity portion of the Consolidated Investment Fund (CIF) portfolio.

Mercer Investment Consulting, Inc., the investment program consultant, was asked to assist the Committee in the search process. All responses were initially reviewed by Mercer to determine if the respondents met the minimum criteria; the proposals were reduced to 13 growth managers and 12 value managers. Those proposals were then reviewed by the UNM Endowment Manger, Mercer Consulting and a sub-committee of the Investment Committee. Three growth managers and four value managers were recommended to the full Investment Committee, which heard oral presentations by each finalist. The equity managers selected by the Investment Committee are MFS (Massachusetts Financial Services, Inc.) in the growth specialty, and Mackay-Shields Investment Management, Inc. in the value specialty.

Responding to an inquiry by Regent Rembe, Mr. Mulcock said that the contracts carry a term of four years with the ability to extend the contracts on a yearly basis for an additional three years. The contracts also contain a 30-day termination notice clause.

- **Regent Gallegos moved acceptance of the 1994-95 Annual Endowment Investment Program Report. Regent Willard seconded the motion.**

**Voice vote was taken and Board members unanimously approved.**

**Motion carried.**

- **Regent Gallegos moved approval of the equity managers selected by the UNM Foundation's Investment Committee. Regent Thomas seconded the motion.**

**Voice vote was taken and Board members unanimously approved.**

**Motion carried.**

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#### **ARCHITECT SELECTION FOR JOHNSON CENTER RENOVATION**

Mr. Roger Lujan, Director of Facility Planning, said the recommendation is to award the design commission for the design of the renovations to Johnson Center to the firm of BDA

Architecture (Albuquerque, NM) in association with Cannon Parkin Sports Architecture Consultant (Los Angeles, CA).

The renovations to Johnson Center will focus on facility enhancements that will improve services for both students and the campus community. It will renovate about 20,000 square feet of existing space. The project will also add about 15,000 square feet of new construction for a weight training room, an exercise/fitness space and a new Outdoor Shop. The project budget is \$4 million to be funded by 1996 UNM General Obligation Bond proceeds. Construction is scheduled for May, 1996 with completion in August, 1997. The fee proposal for the recommended firm is 9%; the fee suggested by the State of New Mexico Architect Rate Schedule for this category of facility is 8.85%. The fee schedule by the State would be the University's basis for the negotiation for that fee.

In response to a concern by Regent Tang about the condition of the School of Architecture and Planning, President Peck said that the University submitted its priority list to the Commission on Higher Education (CHE) ranking the School immediately behind Science and Technology Complex and access for the handicapped. Some of the CHE members have toured the School and know what a dire need it is; yet they ranked it 17 on their statewide list. President Peck said it is very frustrating because it has been highly ranked on the University's request every year. Both he and the Dean Richard Eribes have made presentations to the Facilities Committee at the CHE, and have tried to persuade them to give it a high ranking. President Peck said the CHE is not a supervisory Board, but rather a coordinating board which is to coordinate the University's requests.

Dean Eribes said he appreciates the Regents concern about the dire conditions of the School. He said the School is currently in the process of working with the Real Estate Office in looking for other spaces to begin to aggregate some of the programs. At the request of Regent Gallegos, Mr. Lujan said he would submit a proposal at the December Regents' meeting requesting emergency funding for the immediate needs of the School.

Regent Brazil suggested that the Regents send a letter to the CHE indicating that the rankings as submitted by the University are based on good data and the overall needs of the University, and that the Board takes exception when the CHE arbitrarily changes the rankings without any concurrence or agreement on the part of UNM. Regent President Melendres requested President Peck to draft a letter for the Regents stating their concerns.

At the request of Regent President Melendres, Regent Gallegos said he would be happy to look into other ways of approaching the financing for the School of Architecture and Planning at the December 4 Finance and Facilities Committee meeting.

Regent Gallegos moved approval of the selection of the architect for the Johnson Center renovation. Regent Thomas seconded the motion.

Responding to a concern by Regent Rembe, Mr. Lujan said that the diagrams in the agenda are intended to illustrate in general terms the scope of work that will be addressed by the architect. He said when the project itself comes to the Board for approval, the diagrams will be infinitely more illustrative in terms of explaining the true scope of the work and the improvements that are being made.

Regent Rembe commented that the Board had spent a lot of time on the new bookstore and made a special indentation in order to save some trees. She said the architectural firm did not adhere to these specifications. Regent Gallegos said he felt very strongly about barring a certain architectural firm from ever again bidding on work at the University, because of the representations that were made concerning the bookstore, and, as pointed out by Regent Rembe, the preservation of those trees had not been complied with. He said the problem could be that even when the Regents see the footprint for Johnson Center and approve it, there is the question of what happens in execution.

Voice vote was taken and Board members unanimously approved.

Motion carried.

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#### ACTION ON MATTERS CONSIDERED IN NOVEMBER 9, 1995 EXECUTIVE SESSION

##### Appeal of Catherine M. Miller

Regent President Melendres said the first item is a request for a hearing before the Board of Regents on appeal from the decision by President Peck.

Regent Gallegos said that the Finance and Facilities Committee had studied the information on Ms. Miller's request for her appeal to be heard before the Board of Regents. He said this is a discretionary appeal and should only be taken by the Board in the case of extraordinary circumstances. Regent Gallegos said it was clear to the Finance and Facilities Committee that the evidence did not support that there are extraordinary circumstances present here and recommends that the appeal not be heard. Regent Rembe seconded the motion.

Voice vote was taken and Board members unanimously approved.

Motion carried.

##### Appeal of Juanita Sanchez

Regent President Melendres said the second item is a discretionary appeal filed by Juanita

Sanchez. At the September 14, 1995 Board of Regents' meeting, the matter was voted upon and it was determined that the discretionary appeal would be heard. On October 31, the Regents met in executive session (pursuant to Section 10-15-1-H.(2), NMSA, 1978) to hear the appeal. Provost Coleman and Acting Dean Jan Roebuck took administrative employment action with regard to Ms. Sanchez. Following that action, Ms. Sanchez appealed that decision administratively. The president of the University reviewed the actions of the provost and acting dean and decided that there had been no inappropriate action and no violation of the applicable policies of the University and denied further appeal by Ms. Sanchez.

Regent Willard moved to affirm the President's decision with regard to Juanita Sanchez. Regent Thomas seconded the motion.

Regent President Melendres polled the four Regents who were present at the executive session and eligible to vote on this matter (Tang, Thomas, Willard and Melendres). The four Regents unanimously approved.

Motion carried.

Regent President Melendres said he would request Barbara Stephenson, who served as counsel for the Regents on this matter, to draft a letter for his signature reflecting the decision of the Board. The letter will be sent to the administration and to the grievant, Juanita Sanchez.

Regent President Melendres said that at the end of the Executive Session on October 31, there was a suggestion that this matter might result in litigation. Regent President Melendres requested that, following the open meeting, the Regents meet in closed session based on potential litigation (pursuant to Section 10-15-1-H.(7), NMSA, 1978), and limited personnel matters (pursuant to Section 10-15-1-H.(2), NMSA, 1978).

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#### UNM 2000 -- SCHOLARSHIP AND ACADEMIC EXCELLENCE MEASURES

This item was deferred to the December meeting.

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Regent Gallegos moved adjournment of the open meeting and moved also for a closed meeting to discuss potential litigation (pursuant to Section 10-15-1-H.(7), NMSA, 1978) and limited personnel matters (pursuant to Section 10-15-1-H.(2), NMSA, 1978). Regent Thomas seconded the motion.

The open meeting adjourned at 4:10 p.m., and the Board went into closed session.

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APPROVED:

Arthur D. Melendez

President

ATTEST:

Barbara G. Brazil

Secretary/Treasurer



# EXHIBIT A



THE UNIVERSITY OF NEW MEXICO  
HEALTH SCIENCES CENTER

*From the desk of:*

Rose M. Johnson, Executive Secretary  
Office of the Vice President for Health Sciences  
277-2398/FAX: 277-3486

11-17

*Maria:*

*Attached is a copy of the Telemedicine  
Joint Powers Agreement with everyone's  
signature except for the NM  
Dept. of Finance & Administration.*

*When we receive a signed agreement  
from them, I will send over a  
final copy.*

RECEIVED

NOV 20 1995

PRESIDENT'S OFFICE  
UNM

*Thanks  
Rose*

**JOINT POWERS AGREEMENT  
BETWEEN  
GUADALUPE COUNTY HOSPITAL  
AND  
REGENTS OF THE UNIVERSITY OF NEW MEXICO**

THIS JOINT POWERS AGREEMENT ("Agreement") is entered into this 9<sup>th</sup> day of November, 1995, by the Board of Trustees of Guadalupe County Hospital ("GCH"), Santa Rosa, New Mexico, and the Regents of the University of New Mexico ("UNM"), for its public operation known as the Health Sciences Center.

**I. RECITALS**

- A. GCH is a general acute care hospital, owned by the County of Guadalupe, New Mexico (the "County"), operated by a Board of Trustees appointed by the County, duly licensed by the New Mexico Department of Health ("DOH"), and certified to participate in Medicare and Medicaid.
- B. UNM is a state institution of higher education established by Article XII, Section 11 of the Constitution of the State of New Mexico. UNM operates University of New Mexico Hospital ("UNMH"), a general acute care hospital, under a lease agreement with the County of Bernalillo, New Mexico, as a state teaching hospital. UNMH is duly licensed by the DOH, accredited by the Joint Commission on Accreditation of Healthcare Organizations, and certified to participate in Medicare and Medicaid. UNM also operates other inpatient and outpatient facilities, the School of Medicine, College of Nursing, and the College of Pharmacy, all of which, along with UNMH, are components of the UNM Health Sciences Center.
- C. GCH is the recipient of a grant from the Rural Utilities Service ("RUS") of the United States Department of Agriculture for the design, purchase, installation, operation, utilization, administration, and evaluation of a telemedicine project.
- D. UNM is the recipient of state appropriations for implementation of a telemedicine demonstration project in the 1995-96 fiscal year.
- E. GCH and UNM are empowered to enter into cooperative agreements between themselves pursuant to the Joint Powers Agreements Act, Sections 11-1-1 et seq. NMSA 1978 (the "Act").
- F. GCH and UNM wish to enter into this Joint Powers Agreement to jointly operate and maintain a telemedicine system (the "System") establishing a medical link between GCH, as a hospital serving a rural area of the state, and UNM, as a state

medical teaching facility, in partial fulfillment of their respective obligations to RUS and the State of New Mexico.

## **II. PURPOSE**

This Agreement is developed to provide for operation, maintenance and disposition of telemedicine equipment comprising the System being established to link the health care staff and facilities of GCH with those of UNM.

## **III. TERMS OF AGREEMENT**

### **A. Obligations of GCH**

1. GCH has purchased certain telemedicine equipment which will form an integral part of the System linking GCH with UNM, using funds provided by RUS to GCH. A portion of the equipment purchased by GCH will be installed at UNM.
2. GCH will designate UNM as the agency responsible for operating and maintaining the System.
3. In consideration of this Agreement, upon termination of the RUS grant to GCH, GCH will transfer ownership to UNM of certain telemedicine equipment listed at Exhibit A and purchased by GCH but installed at UNM as an integral part of the System, which equipment is necessary to provide medical link services between GCH and UNM. Funding for equipment at non-rural hubs is a permitted use of RUS grant funds, if they are necessary to provide distance learning and/or medical link services to rural residents at end user sites, pursuant to 7 C.F.R. Section 1703.104(f).
4. Upon termination of the RUS grant to GCH, GCH will accept ownership transferred by UNM of certain other telemedicine equipment listed in Exhibit A, and referred to in Paragraph III-B-3 below.

### **B. Obligations of UNM**

1. UNM has purchased certain telemedicine equipment which will form an integral part of the System linking GCH with UNM, using funds provided by the State of New Mexico to UNM. A portion of the equipment purchased by UNM will be installed at GCH.
2. UNM will be the responsible agency for operation and maintenance of the System, and will enter into the following agreements with the System

equipment vendor selected by UNM and GCH for the entire System linking GCH and UNM:

- a. Network Subscription and Usage Agreement; and
  - b. Service and Support Agreement.
3. In consideration of this Agreement, upon termination of the RUS grant to GCH, UNM will transfer ownership to GCH of certain telemedicine equipment listed at Exhibit A and purchased by UNM but installed at GCH as an integral part of the System, which equipment is necessary to provide medical link services between GCH and UNM.
  4. Upon termination of the RUS grant to GCH, UNM will accept ownership transferred by GCH of equipment listed in Exhibit A, and referred to in Paragraph III-A-3 above..

#### **IV. PAYMENT**

No funds will be transferred between the parties for the obligations imposed by this Agreement. Each party has purchased items of equipment which collectively comprise the System. However, UNM will pay the System equipment vendor the entire charge for network subscription and usage and for service and support for the entire System, with funds provided to UNM by the State of New Mexico for the telemedicine demonstration project.

#### **V. ADMINISTERING AGENCY**

UNM will be the administering agency for this Agreement.

#### **VI. TERM**

This Agreement will become effective on October 1, 1995 or upon approval by the Department of Finance and Administration ("DFA"), whichever is later, and will continue in effect thereafter unless terminated as provided in Section VII.

#### **VII. TERMINATION**

Either party may terminate this Agreement by delivering written notice to the other party at least thirty days in advance of the proposed date of termination, with a copy of the notice to DFA.

## VIII. REGULATORY COMPLIANCE

GCH and UNM will comply with all federal and state laws and regulations related to performance under this Agreement and will maintain in effect all permits, licenses and governmental approvals which may be necessary for that purpose. GCH and UNM will notify each other immediately of any material change in such permits, licenses, or governmental approvals.

## IX. QUALITY MANAGEMENT COMPLIANCE

GCH and UNM will comply with all applicable quality management programs required by each other and by all applicable accrediting, regulatory or funding agencies.

## X. LIABILITY

As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. The liability of GCH and UNM will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended.

## XI. MISCELLANEOUS

- A. **Entire Agreement.** This Agreement represents the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement.
- B. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach of this Agreement.
- C. **Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties, and approved in writing by DFA.
- D. **Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party.

- E. **Governing Law.** This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.
- F. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity or enforceability of any other term or provision to the extent permitted by law.
- G. **Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.
- H. **Maintenance and Retention of Records.** UNM will maintain records as required of any administering state agency pursuant to applicable state laws and regulations. GCH and UNM will maintain fiscal and programmatic records relative to any funds and activities which are the subject of this Agreement for a minimum of three years or longer if required by applicable state or federal laws and regulations, and will allow access to those records for inspection by the parties and applicable state and federal regulatory and funding agencies.
- I. **Relationship of Parties.** The parties and their respective employees are at all times acting as independent contractors. Neither party's employees will be considered the employees of the other party for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits. Except as provided in this Agreement, neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- J. **Appropriations.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the State of New Mexico and the Regents of UNM, or other sponsoring agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the State of New Mexico or the Regents, or other sponsoring agency, this Agreement may be terminated by UNM in accordance with Section VII. The decision of UNM as to whether sufficient appropriations are available will be accepted by GCH and will be final.
- K. **Cooperation and Dispute Resolution.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute.

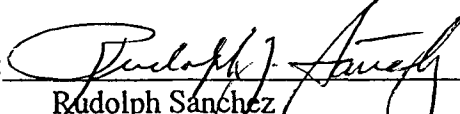
- L. **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
- M. **Acquisition of Property.** Except as otherwise provided in Section III and Exhibit A of this Agreement, title to any property or equipment acquired by UNM or GCH as the result of this Agreement, will remain with the entity which purchased the equipment, either UNM or GCH, respectively.
- N. **Notices.** Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, as follows:

To UNM at:                   The University of New Mexico  
                                   Health Sciences Center  
                                   Office of Special Projects  
                                   Health Sciences and Services Building, Suite 302  
                                   Albuquerque, New Mexico 87131-5001  
                                   Attention:   Emily Freede, M.A.  
   Director

To GCH at:                   Guadalupe County Hospital  
                                   535 Lake Drive  
                                   Santa Rosa, New Mexico 88435  
                                   Attention:   Rose Contreras-Taylor  
   Administrator


- O. **Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.

BOARD OF TRUSTEES  
 GUADALUPE COUNTY HOSPITAL

By:   
 Rudolph Sanchez  
 President, Board of Directors

Dated: 10/18/95

and

By:   
 Rose Contreras-Taylor  
 Administrator

Dated: 10/18/95



REGENTS OF THE UNIVERSITY OF NEW MEXICO,  
FOR ITS PUBLIC OPERATION KNOWN AS  
THE HEALTH SCIENCES CENTER

By: Warren D. Baur

Warren D. Baur  
Associate Vice President,  
Finance & Administration

Dated: 11/10/95

Approved as to form:

Felipe M. Lopez  
Guadalupe County Hospital Attorney

Stephanie S. Madon  
University Counsel

APPROVED:

NEW MEXICO DEPARTMENT OF  
FINANCE AND ADMINISTRATION

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**EQUIPMENT TO BE TRANSFERRED BETWEEN THE PARTIES**

1. Ownership of the following equipment, which will be purchased by GCH but installed at UNM as integral components of the System, will be transferred by GCH to UNM upon termination of the RUS grant to GCH:

<b>Equipment Description</b>	<b>Purchase Price</b>
United Medical Network CLI Radiance System	\$54,900
United Medical Network Teleos IMUX Network Connection	35,000

2. Ownership of the following equipment, which will be purchased by UNM but installed at GCH as integral components of the System, will be transferred by UNM to GCH upon termination of the RUS grant to GCH:

<b>Equipment Description</b>	<b>Purchase Price</b>
Andries Tek Electronic Stethoscope (send site)	\$4,630
Andries Tek Fetal Doppler Unit	550