New Mexico Highlands University Special Board of Regents Meeting President's Conference Room Rodgers Administration Building NMHU Main Campus Las Vegas, NM 87701 May 20, 2014 at 4:00 p.m.

Amended Agenda

(time change)

- 1. Call to Order Chairman Sanchez
- 2. Roll Call
- 3. Approval of the Agenda for May 20, 2014
- 4. Golf Course Restaurant Lease Action Item
- 5. President's Report
- 6. Executive Session (1) Threatened or pending litigation subject to the attorney-client privilege in which the University may become a participant. Pursuant to provisions of NMSA 1978, §10-15-1(H)(7).
- 7. Public Action as Necessary on Closed Session Discussions Action Item
- 8. Adjournment

New Mexico Highlands University Board of Regents Special Meeting May 20, 2014

The New Mexico Highlands University Board of Regents held a special meeting on May 20, 2014 in the President's Conference Room, Rodgers Administration Building on the New Mexico Highlands University main campus in Las Vegas, New Mexico. Acting Chairman López called the meeting to order at 4:00 p.m.

Attendance

Board members present: Mr. Jesus L. López, and Mr. Michael Martinez

Board members participated in the meeting via teleconference were: Ms. Nancy R. Long, Mr. Frank Marchi, and Mr. Leveo V. Sanchez.

Administrative Personnel Present: Dr. James Fries, President; Mr. Max Baca, Interim Vice President for Finance & Administration; Dr. Teresita Aguilar, Provost/Vice President for Academic Affairs; and Dr. Fidel Trujillo, Dean of Students.

Others Present: Ms. Carolina Martínez, Executive Administrative Assistant; and numerous other individuals in the audience including; faculty, staff, and media.

Approval of the May 20, 2014 Meeting Agenda

Regent Martinez moved to approve the May 20, 2014 meeting agenda. Regent Sanchez seconded. Voting in favor were: Regent Long, Regent Marchi, Regent Martinez, Regent Sanchez, and Chairman López. Motion passed unanimously.

Golf Course Restaurant Lease - Action Item

President Fries called on Mr. Max Baca to present the golf course restaurant lease.

Mr. Baca reported meeting with Mr. Juan Ortiz, RFP top bidder and owner of El Fidel Restaurant, to negotiate the lease. The lease was reviewed and approved by NMHU legal counsel. Mr. Baca highlighted key areas of the lease:

- The dining room, kitchen, storeroom, washroom, outer deck, and the shed will be rented to Mr. Ortiz.
- Kitchen equipment, Mr. Ortiz feels can be utilized by his restaurant, will also be rented to him.
- The lease is three-year lease with year-to-year lease extensions up to eight years.
- The amount of the lease, listed in the RFP, is for \$1,800/month for rent with a \$200/month fee for the lease of the NMHU liquor license.
- A percentage of gross sales will go to the university once sales reach \$400,000, which will scale up with increasing sales.
- Uniforms, utilities, gas, and equipment repairs will be paid for by the lessee.
- No arbitration clause was written into the lease and the lease can be canceled by either party with written notice.

Mr. Baca reported there were still a few items under negotiation such as the cleaning of the facility and use/non-use of the NMHU liquor license.

Regent Sanchez asked if there was a yearly rental increase over the three year contract and when the lease would begin. Mr. Baca responded that the lease is for a fixed fee for the duration of the contract. The lease would become effective upon lease signing.

Regent Long asked for clarification on the lease items still under negotiation. Mr. Baca pointed out two items under negotiation: first lease payment due date; contract modifications to have payments due on a quarterly basis rather than a monthly basis; and the alcohol service; the university wants to ensure that the language in the lease indicates that the university has the right to instruct Mr. Ortiz and staff to stop serving alcohol. Mr. Ortiz requested a provision that would require a written notice for him to cease serving alcohol in the event of an infraction. A concern regarding the use of hairnets was modified to comply with state regulations.

Regent Marchi asked for the restaurant hour's operation. Mr. Baca informed the Board that as per the restaurant services RFP, the hours of operation would be 6am – 8pm to support the golf course during the hours of operation. Mr. Ortiz has requested the option of hours of operation extension if needed to increase sales. President Fries noted that the verbiage in lease indicates that minimum days and hours can be modified by a written agreement.

Regent Martinez had no questions.

Regent Sanchez asked if a security deposit was required. He also asked why the university was asking for quarterly lease payments rather than monthly payments. Mr. Baca responded that it was easier for Mr. Ortiz to quarterly payments pay in advance. Regent Sanchez noted that advance quarterly payments would be best for the university. Mr. Baca informed the Board that no security deposit is being required however, the lease stipulates that Mr. Ortiz is responsible for any damages and necessary repairs to the premise and equipment subject to normal wear and tear. The first quarterly payment is due by September 30, 2014. Payments will be due at the start of each quarter.

Chairman López asked why the initial lease was for three years; he pointed out that this was the university's first venture in this regard and has no experience with this type of contract and that perhaps a lesser term would benefit both the university and Mr. Ortiz. His second concern was the termination provision of the contract as listed in section 7.07-F of the lease agreement; the termination of convenience, as is, has one omission. Chairman López wanted to know what the percentage of the direct costs owed to Mr. Ortiz would be if the university terminated the lease for convenience within the first year. Mr. Baca reported that Mr. Ortiz has not provided a plan for any tenant improvements, therefore, there would be no direct costs. Chairman López recommended that all the aforementioned language be omitted from the lease so that the termination clause is a "stand-alone termination for convenience" clause. Chairman López proposed a 60 day notice of termination in place of the 120 day notice of termination. President Fries stated that it would be in the university's best interest to have a 120 day termination notice for the reason that getting a new business off the ground takes time. It would be unfortunate to terminate the lease before the four months. He added that Mr. Ortiz is an

experienced established business owner and that he would like to see the vendor contracted long enough to get the business up and running.

Chairman López asked who prepared the lease agreement. Mr. Baca informed the Board that NMHU's legal counsel, Cuddy & McCarthy, developed the lease.

Regent Sanchez stated that a three-year lease was too long; a security deposit or a quarterly payment in advance should be required. Regents agreed with Regent Sanchez' recommendation.

President Fries asked the Board to consider authorizing the administration to move forward with the lease agreement subject to securing an agreement with the lessee that would include a security deposit equivalent to one month's rent; initial lease term of one-year with the additional years of extension; and the simplified terms of cancelation clause as was discussed earlier in the meeting.

Chairman López called for a motion to authorize President Fries to proceed with finalization of the lease agreement on the condition that the contract include the following changes: providing for a one-year term; requiring a security deposit; and writing a termination for convenience which is standalone without any percentage going to the lessee. Regent Martinez so moved. Regent Long seconded. Voting in favor were: Regent Long, Regent Marchi, Regent Martinez, Regent Sanchez, and Chairman López. Motion passed unanimously.

President's Report

President Fries reported the following:

- Mr. Jeff Falkner was hired as the university's new Athletic Director (AD). He is currently the AD at Graceland University in Iowa. He also served as AD at Brescia University in Kentucky. His official start date at NMHU is July 1, 2014. He will be actively involved in the hiring of new basketball coaches and working with the administration on the finalization of the FY15 athletic budget. President Fries thanked Dr. Trujillo and the AD search committee for their hard work screening the AD applications and candidates.
- The NMHU Baseball team qualified for the regional tournament.
- Several of the NMHU track athletes are competing at nationals.
- The Vatos Rugby Team is also participating in a national competition.
- An article printed on the front page of the Albuquerque Journal featured Ms. Salcia Slack, HU student athlete, for winning the NCAA II heptathlon. She won six of the seven events.
- The university, along with some Foundation Board members, are actively working on a plan to increase Native American student enrollment.
- The administration at Northern New Mexico College asked NMHU to offer a master's degree in educational leadership for a cohort of Española students.
- Renewal for the park & ride agreement will be presented at the next Board meeting.

Executive Session – (1) Threatened or pending litigation subject to the attorney-client privilege in which the University is or may become a participant. Pursuant to provisions of NMSA 1978, §10-15-1(H)(7). Regent Martinez moved to enter into executive session for the sole purpose of discussing the item listed. Regent Sanchez seconded. A roll call was taken; voting in favor were: Regent Long, Regent Marchi, Regent Martinez, Regent Sanchez, and Chairman López. Motion passed unanimously. Motion carried. The Board went into executive session at 4:40 p.m.

In an effort to be transparent, Regent López informed the meeting attendees that the pending litigation to be discussed during the Board's executive session involves the university's dispute with MAKWA Contractors concerning the student union building.

Regent Martinez moved to come out of executive session into open session. Regent Sanchez seconded. Chairman López stated for the record that only the item specified under the executive session item was discussed and no action was taken. Regents confirmed. A roll call was taken and voting in favor of coming out of executive session into regular session were: Regent Long, Regent Marchi, Regent Martinez, Regent Sanchez, and Chairman López. Motion passed unanimously. Motion carried unanimously and the meeting was called back to order at 5:27 p.m.

Public Action as Necessary on Closed Session Discussions – Action Item No action was taken.

Adjournment

Regent Martinez moved to adjourn. Regent Long seconded. Motion carried and the meeting

adjourned at 5:28 p.m.

Hairman

NMHU Board of Regents

Secretary/Treasurer

NMHU Board of Regents