APPENDIX F
Legal Opinion by Virtue and Najjar, PC law firm
"Establishment and Operations of a Chartered Public Bank by the City of Santa Fe (the "City"),
October 13, 2017

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MEMORANDUM

TO: Kelley Brennan, City Attorney, City of Santa Fe

CC: Adam K. Johnson, Finance Director, City of Santa Fe

FROM: Mark E. Chaiken and Richard L.C. Virtue

DATE: October 13, 2017

RE: Establishment and Operation of a Chartered Public Bank by the City of Santa Fe (the "City")

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BACKGROUND

On April 26, 2017, the City Council (the "Council") of the City adopted Resolution No. 2017-32 (the "Resolution") creating a task force (the "Task Force") to determine procedures, timelines and requirements necessary for the City to establish a public bank (the "Public Bank") chartered by the State of New Mexico (the "State" or "New Mexico"). The Resolution states that the "sole purpose of the Public Bank Task Force is to provide the governing body with the information needed to make an informed decision about the pros and cons of submitting an application for a New Mexico Bank Charter for a Public Bank of Santa Fe."

Among the duties and responsibilities of the Task Force are to "consider the processes, resources, risks and timelines necessary for the governing body to make an informed decision." The Resolution requires the Task Force in the course of its work to "work with legal experts in the field of public finance, banking and law" and examine a legal opinion from the City Attorney concerning "the regulatory constraints that are applicable under the legal structure of the Public Bank." The Task Force is further required to "investigate the legal steps necessary to establish a public bank…" and "identify the legally required components of a potential enabling ordinance..."

The purpose of this memorandum is to provide an initial, general analysis, and a framework for discussion and further analysis, of the major legal issues that the Resolution requires the Task Force and the legal opinion of the City Attorney to address. A copy of the Resolution is included as Appendix 1 to this memorandum.

In addition to the Resolution, the following background documents have been provided to us:

- A Public Banking Feasibility Study Final Report (the "Feasibility Study") submitted to the City in January, 2016. A copy of the Feasibility Study is attached to this memorandum as Appendix 2.

- A legal memorandum concerning the Public Bank proposal prepared for "WeArePeople Here! Educational Fund" dated September 25, 2015, (the "2015 Legal Memo"). A copy of the 2015 Legal Memo is attached to this memorandum as Appendix 3.

- A Five-Year Model Supporting a Public Bank for Santa Fe prepared for "WeArePeopleHere!", dated December 2, 2015 (the "Five-Year Model"). The Five-Year Model is attached to this memorandum as Appendix 4.

- A Public Bank Update prepared by the Finance Department of the City (the "Finance Department Update"), dated June 5, 2017, presented to the Council at the June 14, 2017 meeting. A copy of the Finance Department Update is attached to this memorandum as Appendix 5.

- A memorandum dated August 24, 2017, regarding Legal Issues and Matters for further Research and Examination Regarding Proposed Public Bank of Santa Fe prepared by legal counsel to the Financial Institutions Division ("FID") of the New Mexico Regulation and Licensing Department (the "FID Legal Memo"). A copy of the FID Legal Memo is attached to this memorandum as Appendix 6.

We also attach the following Appendices containing documents obtained in connection with preparation of this memorandum:

- Federal Reserve System Application to Register as a Bank Holding Company - Appendix 7.

- Application to the Board of Governors of the Federal Reserve System for Membership in the Federal Reserve System - Appendix 8.

- Interagency Charter and Federal Deposit Insurance Application (applies to applications under the State Banking Act, as defined below) - Appendix 9.

- Flow Chart for Establishing a Public Bank under State law – Appendix 10.

- Federal Regulations Applicable to Public Bank Operations – Appendix 11.

SUMMARY OF CONCLUSIONS

The home rule powers of the City provide a starting point for establishing and operating a Public Bank. Nonetheless, the undertaking would require the City to meet numerous specific legal requirements under both State and Federal law.

We have identified three specific areas of legal analysis that we believe would need to be addressed initially, and favorably resolved in order for the City to proceed to establish and operate a Public Bank.

First, as discussed in Section I below, a careful analysis of the City's home rule powers is required to determine what sources of its money, if any, the City may use to capitalize a Public Bank. Specifically, it must be determined if sufficient City monies exist that are not or will not be required to be held for other uses. Additionally, it must be determined if existing legal authority applicable to the City's use and investment of its own funds, would allow the proposed use of City funds to capitalize the Public Bank. The scope of the City's home rule powers in this area is unsettled, and the specific, unresolved legal question is whether the restrictions on the use and investment of public funds contained in the New Mexico statutes amount to an "express denial" under Article X, Section 6 of the New Mexico Constitution, (the "Home Rule Amendment") of the proposed use of those funds by the City for banking purposes.

Second, as discussed in Section II.F below, Article IX, Section 14 of the New Mexico Constitution, (the "Anti-Donation Clause"), may limit the ability of a Public Bank to loan funds, whether for public or private lending purposes. While we believe there is a legally sound argument upon which the City may rely to accomplish such objectives, the specific issue has not been decided by New Mexico courts. Legal counsel to the FID, the State banking regulator, has expressed in writing his initial analysis that the proposed Public Bank's operations would indeed violate the Anti-Donation Clause. See Appendix 6. Because the New Mexico Banking Act, NMSA 1978, Sections 58-1-1, through 58-8-3, as amended, (the "State Banking Act") provides broad discretion to FID in determining whether to approve a bank charter, an application by the City may not be granted by FID if it has reservations about the City's legal power to operate a Public Bank, including the power to make loans to other parties.

Finally, as discussed in Section II.A below, chartering of any bank, and a request for federal deposit insurance, require the filing of an application with the FID under the State Banking Act, which includes numerous requirements, including identification of sources of capitalization, organization and governance and creation of a business plan. We believe it would be productive for City staff and the Task Force to review the required application, attached as Appendix 9, and determine if the potential benefits of a Public Bank indicate that it would be prudent for the City to devote the substantial resources necessary to put itself in a position to prepare an approvable application. The FID has considerable discretion under the State Banking Act to approve or deny an application, as does the Federal Deposit Insurance Corporation, ("FDIC") in deciding whether to insure a Public Bank (a necessity under State law). The FID's legal discretion to approve or deny an application for a bank charter is a significant consideration in addition to the legal issues of New Mexico home rule authority and Anti-Donation law.

If it is determined to proceed with an application for a State bank charter, we suggest that it may be advisable for the City to consider entering into discussions with FID to explore the FID's legal position on the Anti-Donation Clause and other legal issues and to determine what other preliminary steps need to be taken to start the process of applying to FID for a bank charter before there is a significant additional expenditure of City funds and resources (the application forms themselves state that hundreds of hours are required to create the necessary business plan and complete the required State and federal applications). If after discussion with FID, significant legal issues remain, the City may want to explore additional ways to resolve those legal issues including: (1) requesting an Attorney General's opinion; (2) proposing legislation; or (3) test litigation which may involve filing a declaratory judgment action.

ANALYSIS AND DISCUSSION OF LEGAL ISSUES

I. Legal Authority of the City to Establish and Operate a Public Bank

A. General Discussion

The Resolution speaks of establishing a "chartered public bank", (see, e.g., Resolution p.1, l. 21; p. 2, l. 6). The Resolution also specifically refers to an application for a "New Mexico Bank Charter". (*Id*., p. 4, 1.1). Similarly, the 2015 Legal Memo, p. 5, "Financial Institution Regulations" appears to contemplate that the proposed Public Bank would require a State or Federal charter. Therefore, while there is some ambiguity in the existing discussion, we believe that the City is proposing a Public Bank that will be: (1) state-chartered, and (2) a member of the Federal Reserve System ("Federal Reserve"). However, we also would encourage further discussion of these points, and especially of the question of membership in the Federal Reserve.

The only public bank currently in existence in the United States that has the fundamental characteristics of a chartered commercial bank, such as receiving deposits and making loans to individuals, is the Bank of North Dakota. It is neither a state- nor federally-chartered bank, but rather is a *sui generis* entity created in 1919 pursuant to statutes and regulations, since amended, separate and apart from North Dakota's regular banking acts and regulations. See N.D. Stat. Sec. 6-09-01, et seq. The Bank of North Dakota is also not insured by the FDIC, but rather by the full faith and credit of the state of North Dakota. The Bank of North Dakota was initially capitalized with $2 million of state funds. By North Dakota law, all state funds, as well as most funds of penal and educational institutions, must be deposited with the Bank of North Dakota. Such state banks used to be common, especially in the Nineteenth Century, during periods when there was no U.S. central bank, until the commencement of the creation of the various federal banking institutions, principally during the period leading up to World War I, and then in response to the Great Depression[1]. In contrast, New Mexico law provides for chartering of banks. See, the State Banking Act. New Mexico has no specific law, as there is in North Dakota, providing for the creation of a state-owned financial institution, nor does our State law expressly provide for a bank owned by a municipality or other political subdivision of the State. In fact, the State Banking Act clearly contemplates establishment and supervision of private banks, having been adopted at a time when public banks were rare, and does not expressly contemplate chartering of a Public Bank. Thus, the legal structure in New Mexico is fundamentally different than the legal structure that supports the Bank of North Dakota. We believe the City's authority to establish and operate a Public Bank would flow from its authority as a home rule municipality under the Home Rule Amendment. We note, however, that neither the Home Rule Amendment itself nor the case law interpreting the Home Rule Amendment expressly address whether establishment and operation of a municipally-owned Public Bank falls within the powers conferred by the Home Rule Amendment.

Thus, neither of the bodies of New Mexico law pertinent to the establishment of a Public Bank – the State Banking Act and the Home Rule Amendment and cases interpreting it – expressly address the issues posed in the Resolution.

[1] The preceding discussion is based on our review of recent literature regarding public banks.

B. Public Purpose Doctrine

As discussed in the 2015 Legal Memo, all actions of governmental entities must promote the health, welfare, safety, morals and general welfare of the public they serve. This legal requirement is generally known as the public purpose doctrine. The public purpose of the establishment and operation of a Public Bank is fundamental to its legal validity. We have not made a detailed analysis of the public purpose doctrine in this memorandum, because as stated in a leading legal treatise on municipal law, this is initially a legislative determination to be made by the Task Force and the City; 15 McQuillin, Municipal Corporations § 39:24 (3d. ed.); and "[N]o hard and fast rules exist for determining whether specific uses and purposes are public or private. 12 McQuillin, Municipal Corporations § 36:3 (3d. ed.).

The City has already implemented significant portions of the actions recommended in the Feasibility Study as documented in the Finance Department Update. As the Task Force proceeds to address the additional matters set out in the Resolution, we believe assessment of the public purpose of each major action recommended by the Task Force be addressed and documented. We recommend that the documented public purpose of each major element addressed by the Task Force be incorporated into findings contained in any enabling ordinance providing for the establishment and operation of a Public Bank, after legal review.

C. Home Rule Authority of the City to Establish and Operate a Chartered Bank that is Compliant with State and Federal Law

1. Threshold Legal Questions

We believe that there are two threshold legal questions presented to the Task Force in the Resolution, namely, whether (1) a home rule municipality has power sufficient to apply for, establish and operate a chartered bank pursuant to State or Federal law, which is different from the question of (2) whether a home rule municipality has sufficient power to establish a bank or financial institution of its own, pursuant to an enabling ordinance, for example, that is similar to the provisions of N.D. Stat. 6-09-01, *et seq*. Put another way, can a home rule municipality charter a bank pursuant to existing New Mexico law, or can it create its own law? The 2015 Legal Memo, does not explicitly make this distinction, although the 2015 Legal Memo does state that "so long as the City's bank complies with the Banking Act's requirements," the City should be able to establish a Public Bank. As discussed below, we agree with the general conclusion that the City, as a home rule municipality, may have the authority to apply for a State bank charter and establish a Public Bank as long as it complies with existing law. Whether it has sufficient authority to establish a Public Bank separate and apart from State or Federal law is a much more complex question as to which we have found no direct legal precedent; in this memorandum, we have undertaken only to address the establishment of a Public Bank pursuant to existing State law, as that appears to be the direction from the City, and because pursuing the second course would add significant complexities to an already complex process. The remainder of this memorandum addresses the major legal issues we believe would need to be addressed if the City decides to apply for a charter and establish and operate a Public Bank.

As an additional point, we also note that action by the State legislature could help overcome some of the issues discussed below. Legislation could clarify many of those issues. While legislation making clear that a home rule municipality has the power to establish a bank, and clearly allowing for public ownership of banks, would not necessarily preclude all legal challenges, or solve all problems, it would go a long way towards doing so. Attempting to get legislation passed might be a practical way of simplifying the issues around and procedure for establishing the proposed Public Bank.

2. Specific Home Rule Authority to Establish and Operate a State-Chartered Bank

The Home Rule Amendment authorizes the City to "exercise all legislative powers and perform all functions not expressly denied by general law or charter." Home Rule Amendment, § 6.D. As previously stated, we have found no New Mexico statute authorizing or specifically addressing the authority of a home rule municipality to establish and operate a bank. The State Banking Act establishes requirements applicable to the issuance of a charter to establish and operate a bank. We have found no New Mexico cases construing the Home Rule Amendment in the specific context of a Public Bank. We summarize in this section the New Mexico cases interpreting the Home Rule Amendment in other contexts for purposes of analysis of the City's authority under the Home Rule Amendment to establish and operate a Public Bank.

New Mexico State and Federal courts have interpreted the Home Rule Amendment in numerous cases since its adoption in 1970. In the seminal case of Apodaca v. Wilson, 1974-NMSC-071, 86 N.M. 516, 525 P.2d 876 (1974), the New Mexico Supreme Court established the principle that a "home rule municipality no longer has to look to the legislature for a grant of power to act, but only looks to legislative enactments to see if any express limitations have been placed on their power to act." 86 N.M. 516 at 521. Apodaca further refined that principle to state that a general law cannot "deprive cities of the right to legislate on purely local affairs germane to the purposes for which the city was incorporated", 86 N.M. 516 at 522, and stated the test to be applied is "whether or not the performed activity is proprietary." *Id*. Apodaca held that the City of Albuquerque was acting in a "proprietary capacity in operating its sewage and water systems" and thus was not required to adhere to state laws governing the operation of municipally-owned water and sewer systems. Similarly, in City of Albuquerque v. New Mexico State Corp. Comm'n, 1979-NMSC-095, 93 N.M. 719, 605 P.2d 227 (1979), the New Mexico Supreme Court held that the regulation of a limousine service is proprietary rather than a governmental function, and thus a home rule municipality did not have to adhere to state law requirements applicable to the regulation of a limousine service.

Since the decisions in Apodaca and State Corp. Comm'n, New Mexico courts have allowed the exercise of home rule authority on the basis that the matter at issue is "proprietary" or otherwise of "purely local concern", on only one occasion. See State ex rel. Haynes v. Bonem, 1992-NMSC-062, 114 N.M. 627, 845 P.2d 150 (1992) (statute requiring five districts in commission-manager municipality addressed a matter of local concern and thus did not prohibit a home rule municipality from establishing a greater number of districts). Instead, New Mexico courts have analyzed the home rule principles enunciated in Apodaca to allow a home rule municipality to act in areas where there is no express authorization to do so, if no "express limitations have been placed on their power to act" and the State has not "expressly denied" a home rule municipality the right to act.

Apodaca; *supra*. The fundamental analysis, therefore, is whether the general State laws contain express limitations that negatively impact or preclude the authority of a home rule municipality to establish and operate a Public Bank.

The most recent decision by the New Mexico Supreme Court relating to the Home Rule Amendment is Smith v. City of Santa Fe, 2006-NMCA-048, 139 N.M. 410, 199 P.3d 866 (2006), aff'd, 2007-NMSC-055, 142 N.M. 786, 171 P.3d 300 (2007), in which the New Mexico Supreme Court granted certiorari and affirmed the decision of the New Mexico Court of Appeals found at 139 N.M. 410 (Ct. App. 2006) "for the reasons contained in the Court of Appeals opinion." 142 N.M. 786 at 794. The decision of the Court of Appeals held that the State statute authorizing the State Engineer to issue permits for domestic wells was a "general law" and that the power exercised by the City to prohibit drilling of domestic wells was not "expressly denied" by the statute. Because the Smith case includes an analysis of several key cases interpreting the Home Rule Amendment, and was affirmed by the New Mexico Supreme Court, we use the Smith case as a central source for analysis of the City's home rule authority in the context of establishment and operation of a Public Bank.

The Smith Court applied the two step test expressed in the Home Rule Amendment. First, the court concluded that the statute relating to water well permits is "a general law", because it "applies generally throughout the state, relates to a matter of statewide concern, and impacts inhabitants across the entire state." 139 N.M. 410 at 413.

The court then applied the second step, analyzing whether the general law "expressly denies" the City the power to prohibit the drilling of domestic wells that is permitted by general law. In applying the second step of the analysis the Court refined the general principle enunciated in Apodaca to include three elements: "(a) whether the statute 'evinces any intent to negate such municipal power'… (b) whether the effect of statute implies 'a clear intent to preempt that governmental area from municipal policy making'… and (c) whether the grant of authority to another governmental body 'make its exercise by [the City] so inconsistent with the [statute] that it is equivalent to an express denial.'" 139 N.M. 410 at 413-414. The court then engaged in a specific analysis of each element of the second step and concluded that no "express denial" under the Home Rule Amendment existed.

In a similar case involving the City, Qwest Corp v. City of Santa Fe, 380 F.3d 1258 (10th Cir. 2004), the Tenth Circuit Court of Appeals applied the "preemption" element of the analysis adopted in the Smith case and held that the New Mexico Telecommunications Act, which authorizes the New Mexico Public Regulatory Commission ("NMPRC") to regulate the service of telecommunications companies, did not preempt the adoption by the City of an ordinance regulating use by telecommunications companies of land and rights of way owned by the City. The court severed those provisions from other City ordinance provisions found to be prohibitive and upheld the portions of the City ordinance that did not purport to usurp the power of the NMPRC to issue Certificates of Public Convenience and Necessity to telecommunications companies. 380 F.3d 1258 at 1269.

The Qwest Corp., and Smith cases, as well as New Mexicans For Free Enterprise v. The City of Santa Fe, discussed below, involved the authority of the City to regulate areas regulated under State law where no express authority for the City to regulate exists. In the case of the Public Bank, the City would not be regulating an area; instead the City would be acting in an area for the benefit of the public where no express authority to act exists. Even though the establishment and operation of a Public Bank is not factually identical, we believe the Qwest Corp., Smith, and New Mexicans For Free Enterprise cases provide a reasonable basis for the City to, as a general proposition, proceed to evaluate its authority to establish and operate a Public Bank. Nonetheless, we believe that the New Mexico case law interpreting the Home Rule Amendment would likely require the City to establish and operate the Public Bank in a manner that is not "expressly denied" by State law. In making a determination of whether an existing general law constitutes an express denial, a court would likely apply the three elements considered in Smith, *supra*. New Mexico cases have applied one or more of these three elements in various contexts. We summarize those cases below to provide background as to how a New Mexico court would apply them in the context of a proposed Public Bank.

a. Cases Regarding Preemption

(1) Cases Finding Preemption of Home Rule Authority

Westgate Families v. County Clerk of the Incorporated County of Los Alamos, 1983-NMSC-061, 100 N.M. 146, 667 P.2d 453 (1983) is likely the most restrictive case decided by our Supreme Court with respect to municipal home rule powers. In Westgate Families, the court held that the State Zoning Enabling Act expressly denies the power of a home rule municipality to conduct a referendum election on a zoning decision made by the governing body, because that Act expressly provides a procedure for zoning by the governing body. The County's home rule charter provision provided for a referendum on ordinances adopted by the governing body, if a significant number if voters file a petition call for a referendum.

The court held:

> "… the Act expressly denies an exercise of zoning power by referendum, and we hold that (the) County is precluded by the Act from claiming the power to zone by referendum because the Act expressly provides for zoning by representative bodies."

Thus, our Supreme Court on Westgate Families held that a statutory directive amounted to an express denial of home rule power even in the absence of language negating the home rule power at issue. More recent New Mexico cases discussed in subsequent sections of this memorandum adopt a less restrictive view of home rule authority.

In New Mexico Fed'n of Labor et. al. v. City of Clovis, N.M., 735 F. Supp. 999 (D.N.M. 1990), the New Mexico Federal District Court held that the National Labor Relations Act preempted a "Right to Work" ordinance of the City of Clovis.

Applying a similar analysis, the New Mexico Court of Appeals in Prot. & Advocacy Sys. v. City of Albuquerque, 2008-NMCA-149, 145 N.M. 156, 195 P.3d 1 (2008), held that State Mental Health and Developmental Disabilities Code and the State Mental Health Care Treatment

Resources Act creates a comprehensive scheme governing the treatment of mental illness, preempting a home rule municipality from adopting an ordinance governing the same areas.

In Am. Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, 128 N.M. 315, 992 P.2d 866 (1999), the New Mexico Supreme Court held that the Delinquency Act of the State Children's Code preempted the City from establishing a juvenile curfew ordinance and fines for certain juvenile activity. The court reviewed the purpose stated in the Code and the provisions giving a children's court exclusive original jurisdiction over juvenile offenses. Even though the law was silent as to municipal authority, the court held:

> In this case, we determine that the Children's Code contains the 'express statement of the authority or power denied' that is necessary to preempt a home-rule ordinance under the law articulated in Apodaca v. Wilson (citation omitted). 128 N.M. 315 at 319.

The New Mexico Supreme Court invalidated utility relocation ordinances requiring undergrounding within roads designated as a public highway in City of Albuquerque v. New Mexico Pub. Regulation Comm'n, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297 (2003), holding that the statutes governing utilities relocation are "preemptive on the subject of relocation costs". 134 N.M. 472 at 478.

(2) Case Finding No Preemption

In City of Rio Rancho v. Mazzei, 2010-NMCA-054, 148 N.M. 553 239 P.3d 149 (2010), the court determined that no preemption of home rule authority results from the Motor Vehicle Code because:

> New Mexico's DWI statutes clearly contemplate the existence of municipal DWI ordinances in that the statutes discuss the proper interaction between such ordinances and the statutes.
> 148 N.M. 553 at 557.

(3) Analysis of Preemption Cases

Each of the cases applying a preemption analysis involved regulation by a home rule municipality in an area regulated by the State. Here, the City is not regulating an area but rather is acting in an area regulated by the State. Because the City's proposed actions do not involve regulation, traditional preemption principles should not apply.

b. Cases Regarding Express Denial of Home Rule Authority

(1) Express Denial Held to Prohibit Exercise of Municipal Home Rule Authority

In Chapman v. Luna, 1984-NMSC-029, 101 N.M. 59 678 P.2d 687 (1984), the New Mexico Supreme Court held that the fees charged pursuant to the Albuquerque-Bernalillo County

Motor Vehicle Inspection Program were "expressly denied" by a provision in the Motor Vehicle Code prohibiting municipalities from charging fees for vehicles subject to registration with the State. The Chapman court distinguished Apodaca on the basis that the statute at issue in Apodaca neither authorized nor prohibited the use of utility funds in the manner used by the City of Albuquerque. Chapman, 101 N.M. 59 at 62.

In Rainaldi v. City of Albuquerque, 2014-NMCA-112, 338 P.3d 94 (2014), the New Mexico Court of Appeals held that a state statute expressly denies a home rule municipality the authority to establish its own overtime compensation schedule. The statute at issue created a timeline within which an employer must pay its employees for services rendered. The home rule municipality created a longer time for the payment of overtime pay to police officers. The court held that the statute is a "general law because it applies generally throughout the state, relates to a matter of statewide concern, and impacts workers across the entire state. Rainaldi, *supra*., at ¶ 27.

(2) Statutes Found to Not Expressly Deny Home Rule Authority

The City's minimum wage ordinance was held to be within the City's home rule authority and not inconsistent with State law in New Mexicans For Free Enter. v. The City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149 (2006). The court held:

> "…a home rule municipality may set a minimum wage higher than that required by the state Minimum Wage Act (citation omitted), because of the independent powers possessed by municipalities in New Mexico and the absence of any conflict with state law."
> 138 N.M. 785 at 791.

This opinion is unique in that the court held that the minimum wage ordinance was "a private civil law", but upheld the ordinance as an exercise of an "independent municipal power" exemption to the prohibition of adoption of private or civil laws in the Home Rule Amendment. Nonetheless, the opinion in NewMexicans for Free Enterprise contains a good discussion of "express denial" and recognizes the "independent power" possessed by a home rule municipality in the absence of express statutory authority and in the absence of express denial by statute.

(3) Analysis of "Express Denial" Cases

We believe the case law on "express denial" requires an analysis of whether the specific actions proposed by the City to establish and operate a Public Bank are expressly prohibited by State law. This analysis involves a comparison of the specific actions required to establish and operate a Public Bank with any applicable statute.

c. Cases Regarding Intent to Negate Home Rule Authority

(1) Cases Finding an Intent to Negate Home Rule Authority

In Re Generic Investigations into Cable Television Servs. in State of N.M., 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155 (1985), the New Mexico Supreme Court rejected the argument that home rule municipalities may regulate cable television service to the exclusion of the State Corporation Commission (now the NMPRC). The court held that the authority of the State Corporation Commission under Article XI, of the New Mexico Constitution is so inconsistent with the home rule authority that it is "equivalent to an express denial." 103 N.M. 345 at 351.

Casuse v. City of Gallup, 1987-NMSC-112, 106 N.M. 571, 746 P.2d 1103 (1987), held that a statute requiring municipalities with population over 10,000 to elect governing body members from single member districts "clearly intends to preempt… [and] should be sufficient without necessarily stating that affected municipalities must comply and cannot operate to the contrary." 106 N.M. 571 at 573. The court, distinguishing the statute and ordinance at issue in Apodaca, rejected the argument of the City of Gallup that a statute must "specifically state 'and no municipality may do otherwise."' *Id*.

Similarly, the New Mexico Court of Appeals in Cottrell v. Santillanes, 1995-NMCA-090, 120 N.M. 367, 901 P.2d 785 (1995), held that the Home Rule Amendment did not permit a home rule municipality to amend its City charter to impose term limits on city councilors, because the Qualifications Clause, Article VII, Section 2, of the New Mexico Constitution, establishes qualifications to hold public office and those qualifications may not be supplemented, except by constitutional amendment. In rejecting the City of Albuquerque's argument to the contrary, the court stated "[T]o the extent that Appellees argue that such a clear denial must be phrased in negative terms or that the positive Qualifications Clause does not amount to a denial, we disagree." 120 N.M. 367 at 369. Further the court distinguished Haynes as addressing a matter of local concern (the number of governing body members) and cited Casuse as addressing a matter of statewide concern (districting vs. at large elections) because of the importance of districting in inquiring that voting rights are not diluted. *Id*.

In City of Las Cruces v. El Paso Elec. Co., 904 F. Supp. 1238 (D.N.M 1995) decision quashed, 1998-NMSC-006, 124 N.M. 640, 954 P.2d 72 the New Mexico Federal District Court held that the Home Rule Amendment did not confer authority to a home rule municipality to condemn a private electric utility. The federal court found that "home rule status is not relevant in this case. There are no clear policy reasons for differentiating between charter cities and non-charter cities." 904 F. Supp. 1238 at 1251. The court concluded:

> Article X, Section 6 of the New Mexico state constitution merely grants the City general powers and clearly does not constitute express statutory authority nor authority by necessary implication to condemn EPEC's system. *Id*. The Federal District Court relied on authority conferred by condemnation statutes and effectively ignored the Home Rule Amendment.

The issue addressed by the Federal District Court in City of Las Cruces was ultimately resolved by the New Mexico legislature. In City of Las Cruces v. El Paso Elec. Co., 1998-NMSC-006, 124 N.M. 640, 954 P.2d 72 (1998) the New Mexico Supreme Court was asked to review certified State law questions regarding the city's authority to condemn a privately-owned electric utility system. The court held that the certified questions were rendered moot by a statute adopted by the New Mexico legislature in 1997 expressly authorizing municipalities to condemn a private electric utilities. The legislative resolution of the City of Las Cruces case provides an example of a successful use of the legislative process to resolve a significant issue related to municipal home rule power.

(2) Analysis of "Intent to Negate" Cases

The cases using the "intent to negate" analysis weaken the language in the Home Rule Amendment requiring express denial of power by applying a test similar to the preemption test in areas where a home rule municipality is acting in an area, but not regulating the area. These cases indicate that exercise of home rule authority must be consistent with State law where State law establishes standards but does not expressly state that a home rule municipality may not act.

3. Summary of Home Rule Analysis

The case law summarized in this section, although it does not specifically address issues related to a Public Bank, provides guidance as to how a New Mexico court would address those issues. Our initial review of the general laws of the State reveals no clear "express denial" of the general authority of the City to establish and operate a Public Bank; nonetheless, the New Mexico case law interpreting the Home Rule Amendment requires that the City engage in a step by step analysis of the general laws of the State, if it proceeds to explore the establishment of a Public Bank, to determine if the general laws of the State contain specific provisions that would prohibit the exercise of the City's home rule authority in connection with specific matters essential to the establishment and operation of a Public Bank. The following is a listing of general laws of the State, we have identified to date that would most likely apply to a Public Bank:

- State Banking Act;
- Regulations of the FID;
- Statutes governing use of public funds found in: NMSA 1978, Sections 6-6-1 to -20, as amended, including deposit and investment of public funds, the Bateman Act and municipal budgets;
- The State Audit Act, NMSA 1978, Sections 12-6-1 to -14, as amended; and
- The Anti-Donation Clause.

In addition, we note that Section 9.01 of the City Charter requires that the City comply with the laws and policies of the State regarding investment of public funds. This City Charter provision may further restrict the home rule authority of the City to establish and operate a Public Bank.

We summarize and discuss the effect of those State laws and Section 9.01 of the City Charter on the potential for establishment and operation of a Public Bank below.

II. Requirements of State and Federal Laws Applicable to Establish and Operate a Public Bank

A. A State-Chartered Bank

Banks are either state-chartered or nationally-chartered, meaning that they are chartered either pursuant to State or Federal law. The decision as to whether to charter pursuant to State or Federal law affects, but only to a limited degree, the body of law which applies. The effect is limited, because even state-chartered banks are subject to federal regulation and supervision, by the FDIC and often the Board[2] of Governors of the Federal Reserve ("Federal Reserve Board") Nationally-chartered banks are subject to supervision by the Office of the Controller of the Currency ("OCC"). State-chartered banks in New Mexico are also subject to regulation by FID.

The Resolution indicates that the City wishes to charter the proposed Public Bank under New Mexico law. Chartering of State banks is made pursuant to the State Banking Act, and the rules and regulations of the FID, particularly NMSA 1978, Sections 58-1-52 to -61, as amended. A flow chart of the process for establishing the Public Bank is attached hereto as Appendix 10.

1. Initial Chartering Requirements

The direction from the Resolution is to investigate the formation of: (1) a state-chartered bank that is (2) a member of the Federal Reserve. This section therefore examines the requirements for chartering a bank under New Mexico law that is a member of the Federal Reserve. Some initial chartering requirements are set out in the New Mexico statutes, along with various requirements relating to capitalization, surplus, and reserves. However, the FID refers potential applicants to the FDIC home-page for the application forms to apply to open a state-chartered bank in New Mexico.

a. State Law – State Banking Act

(1) Bank Holding Company

As an initial matter, we believe that, in order to charter a bank, the City will first have to form a bank holding company, ("BHC"). The BHC will in turn be responsible for the chartering process.

- A State bank may be organized by five (5) or more individuals, or by a BHC. § 58-1-52. We assume that the City itself will want to organize the Pubic Bank, and that it will not be organized by any individuals. Therefore, the Public Bank will have to be organized by a BHC in turn wholly owned by the City.

- A "bank holding company" is defined as "any company which has control over any bank or over another company that is or becomes a bank holding company." § 58-1-2(B). The definition is therefore somewhat circular.

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[2] We note that the various initial memoranda and the Resolution appear to contemplate that the Public Bank will be a member of the Federal Reserve.

- A "company" in turn is defined as "any corporation, partnership, trust other than a voting trust, association or similar organization but shall not include any corporation the majority of the shares of which are owned by the United States or by any state." § 58-1-2(C). The City will therefore have to determine the form that it wants its company, that will act as the BHC, to take. It can avoid problems that may arise from the last sentence of this section, which may be interpreted to apply not only to states, but to their political subdivisions, such as the City, by not choosing to form a corporation, but instead choosing some other form, such as a partnership or limited liability company. Note that we do not believe that this restriction against ownership of shares applies to the City, as statutes usually specify political subdivisions of the State, in addition to the State itself, when making such prohibitions; however, it is easy to avoid any ambiguity by choosing an alternate organizational form. It is not clear whether the City itself, or a department or agency of the City, can itself be a "company" within the meaning of this definition, and we believe it would be better to form a separate organization, apart from but controlled by, City government, to be the BHC. However, the State Banking Act does not expressly provide for or contemplate the establishment and operation of public banks, which may influence the FID's disposition of an application for a charter for a Public Bank. Indeed, the language prohibiting State ownership may be taken as a denial by implication of the power to form a Public Bank.

- BHCs are subject to Federal law, specifically the Bank Company Holding Act, 12 U.S.C. § 1841-1852. BHCs must register with the Federal Reserve Board, 12 U.S.C. § 1844, and must comply with the Federal Reserve Board's requirements. (The application to register as a BHC is attached hereto as Appendix 7).

- BHCs are subject to ongoing supervision and regulation by the Federal Reserve Board.

(2) Bank Formation

State law initially sets out various requirements for chartering a bank. However, the statutes and regulations also make reference to Federal banking law.

- The statutory steps for forming a bank are set out in Sections 58-1-56 to -61, although other parts of the State Banking Act will come in to play. Additionally, regulations issued by the FID play a role.

- The organizers of a bank must file a notice of intention with the FID. There is an initial filing fee equal to 0.5% (one half percent) of the proposed capital, up to a maximum of $7,500. The notice must include, among other things, the proposed capital structure of the Public Bank, a feasibility study setting out the need for the Public Bank, and the benefits to be derived from its creation, and a five (5) year projection for the Public Bank's operations. § 58-1-56(A)(3), (6), (7). There must also be a prospectus describing the stock offering of the Public Bank, that complies with New Mexico's Securities Act. § 58-1-56(A)(8). The City will need to provide additional financial information.

- In particular, the notice must include the proposed capital structure of the Public Bank, including the number of shares the Public Bank will issue and the value of such shares. § 58-1-56-(A)(3). There must also be a 5-year projection of the Pubic Bank's operations and income § 58-1-56-(A)(7), and official prospectus for the shares. §58-1-56-(A)(8). Each organizer – in this case, the City and its BHC – has to file financial reports with the FID, although these remain confidential. § 58-1-56-(A)(10).

- The FID must approve the notice of intent. The statute does not provide any guidance for the denial or approval of the notice. The State Banking Act merely states the process that applies after the FID approves the notice. The lack of standards gives FID very broad discretion to approve or deny the notice, and such a decision may be very difficult to challenge.

- Multiple parts of the State Banking Act deal with capital subscription requirements. We do not believe this will be an issue for the City, given that the City will be providing all the capital to form the Public Bank. If the City decides to allow for private capital subscription, additional steps will need to be met.

- Within 180 days of the filing of the notice of intention (<u>not</u> the approval by the FID), and after the capital has been fully subscribed, the City will have to apply to the FID for permission to file organization papers with the NMPRC. § 58-1-57. The State Banking Act does set out the factors that the FID will consider in granting or denying that request. § 58-1-58. The State Banking Act requires that FID make a "careful investigation and examination." § 58-1-58(A). FID will look closely at the character, reputation and financial standing of the people organizing the Public Bank, as well as those qualities in its proposed directors. *Id.* It will carefully examine the proposed business plan to see if there is a need for the Public Bank in the community, including the need for additional providers of credit, and the volume of business in the community. FID can look at "such other facts and circumstances" as it deems necessary to evaluate the application. § 58-1-58(A)(7). All in all, FID has very broad discretion to grant or deny the charters, and its decision would only be subject to challenge by appeal under the Administrative Procedure Act, which would likely be a lengthy and expensive process. Note that, as discussed below, other agencies - in particular the FDIC - will also have broad discretion to grant or deny essential aspects of any bank application. Such decisions are very difficult to challenge.

- If the FID approves the request, the organizers may then file the articles of incorporation of the Public Bank with the NMPRC. The FID will also then issue a certificate of authority for the Public Bank. § 58-1-60. The Public Bank will need articles and by-laws, which will be approved by the directors of the Public Bank at their initial meeting.

- The State Banking Act contains additional requirements, such as capital and reserve requirements. § 58-1-55 (minimum capital for a bank is $500,000), § 58-1-69 (additional capital requirements). However, if the Public Bank is a member of the Federal Reserve, that body's capital and reserve requirements will apply, and not those of the State Banking Act. *See, e.g.*, Section 58-1-20, providing that if a bank becomes a member of the Federal Reserve, then its reserve requirement is set by that body; Section 58-5-9, providing that compliance with the Federal Reserve's reserve requirements is deemed compliance with the State's reserve requirements. *And see* NMAC 12.16.62, providing that the reserve requirements for state-chartered banks shall be those set by the Federal Reserve in its regulations, ("Regulation D").

b. Federal Law

Because it is proposed that the Public Bank be a member of the Federal Reserve, some Federal law will apply. In any event, even if the Public Bank is not a member of the Federal Reserve, the Federal Reserve and the FDIC will have some supervisory authority over any city Public Bank. And, as noted above, State law makes reference to Federal law for purposes of defining certain requirements and responsibilities of banks and their directors.

(1) Federal Reserve Membership

- State-chartered banks in New Mexico may become members of the Federal Reserve. § 58-5-8. When they do, the capital and reserve requirements of the Federal Reserve, rather than State law, apply. § 58-1-10; § 58-5-9.

- State-chartered banks are also authorized pursuant to Federal law to apply to become members of the Federal Reserve. 12 U.S.C. § 321; 12 C.F.R. § 208.3; 12 C.F.R. § 262.3.

- Members of the Federal Reserve are required to comply with the capital and reserve requirements set by the Federal Reserve, and to comply with other requirements relating to withdrawal or impairment of capital. 12 U.S.C. § 324.

- The Federal Reserve has a great deal of discretion in deciding whether to admit an applicant. Even if the Public Bank complies with all stated requirements, discretion as to whether to admit the Public Bank still exists, and the Federal Reserve Board may impose additional conditions on membership. 12 C.F.R. § 208.3. The Public Bank's capital stock and surplus capital must "in the judgment of the Board" be adequate "in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities." 12 U.S.C. § 329. This language gives a great deal of latitude to the Federal Reserve Board.

- The Public Bank will also be required to become approved for deposit insurance from the FDIC, if it is in the business of receiving deposits, and its capital is below a certain level. 12 U.S.C. § 329. Note that this requirement already exists under the State Banking Act, and the Public Bank must obtain deposit insurance from the FDIC to operate under State law.

- Pursuant to statute and regulation, the Federal Reserve has prepared a form of application to become a member. A copy of the application form is attached hereto as Appendix 8. While the application appears short, it will take a considerable amount of effort to complete. Among other requirements, the applicant for membership must submit a business plan for the Public Bank, and draft articles of incorporation. Note that these documents are also required to be prepared for purposes of state charters and FDIC applications.

- Membership in the Federal Reserve also requires that members purchase stock in the Federal Reserve Bank for the Federal Reserve District in which they are located. (Santa Fe, along with the rest of northern New Mexico, is part of the Tenth District of the Federal Reserve, headquartered in Kansas City, Missouri.) Additional rules govern the form of payment that is required for this purchase. One half of the subscription amount only must be made; the remaining half is subject to call by the Federal Reserve Board.

- Membership in the Federal Reserve means that the Public Bank will be subject to examination and supervision by the Federal Reserve Board. This is in addition to regulation and supervision by FID. All Public Bank activities are subject to regulation, oversight, and regular examination. A list of some of the applicable regulations is attached hereto as Appendix 11.

- Because non-member banks have the same access to almost all of the services provided by the Federal Reserve, especially with respect to check clearing and automatic clearinghouse transfers, as member banks, there is no requirement that the City's proposed Public Bank be a part of the Federal Reserve; and, indeed, most state-chartered banks are not members. However, membership in the Federal Reserve comes with more stringent capital and reserve requirements, and additional responsibilities for the Public Bank. We would therefore recommend that the City consider whether there is any benefit from having its Public Bank be a member of the Federal Reserve, and what the trade-offs for such membership might be. In this context, we note that of over 4,100 state-chartered banks, only approximately 20% are members if the Federal Reserve.

(2) Federal Deposit Insurance

- Such insurance is required if the Public Bank is to be state-chartered. 12 U.S.C. § 329. Furthermore, to the extent that the Public Bank offers commercial banking services to either individuals or businesses, most customers expect a bank to be FDIC insured, and such insurance may be desirable to build confidence in the Public Bank.

- State law permits state-chartered banks to apply to become insureds of the FDIC. *See* the State Banking Act, §§ 58-2-1 to -8, as amended.

- Pursuant to the Federal Deposit Insurance Corporation Act, 12 U.S.C. § 1815 and 1816, state-chartered banks may apply to become insured by the FDIC, and the FDIC has issued a form for such applications. A copy of that form is attached hereto as Appendix 9. Note that the form itself indicates that it will take approximately 250 hours to complete.

- The FDIC examines applications submitted by publicly-owned banks "very closely", according to their public guidance. Close examination is merited due to public banks' exposure to the political process. However, the FDIC also takes into consideration the unique and important roles that public banks may serve in a community.

- Among other factors, in considering whether to grant an application for insurance, the FDIC will consider: (1) the financial history of the Public Bank, if any; (2) the adequacy of its capital structure; (3) future earnings prospects; (4) the character of the management; (5) the risk to the FDIC; and (6) the convenience and needs of the community. 12 U.S.C § 1816.

- The Public Bank will be subject to significant supervision and reporting requirements. *See*, e.g., 12 U.S.C. § 1817, (assessments); 12 U.S.C. § 1828 (regulations). And see Appendix 11, setting out a sample of the applicable regulations. The Public Bank's activities will be restricted to those permitted by Federal law, in the event that the State Banking Act grants more latitude. 12 U.S.C. § 1831(a). There will be federally-imposed limits on the amount of interest the Public Bank can charge borrowers. 12 U.S.C. § 1831(d).

c. Capitalization of the Public Bank

Capitalization represents a unique challenge for a Public Bank. Banks in the United States raise capital from the private markets, and their funds are not restricted in the same way that public funds are.

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- Some capital can be invested; some has to be maintained as reserves. The amount of reserves, and the form in which they must be held, is also a matter of law and regulation.

- Banks usually raise capital through the issuance of stock. In this case, all the stock will be held by the BHC the City will also need to create in order to own the Public Bank. The BHC will therefore need to raise the capital to purchase the stock of the Public Bank.

- Banks are most often capitalized with private capital. The City proposes to use public funds in order to capitalize the Public Bank. Public funds are often subject to restrictions on use, and each proposed source of funds will need to be analyzed in order to determine whether it may be used for the purpose of Public Bank capital, and whether there are any other restrictions on its use for other purposes, such as lending.

- We further note that there are restrictions on the use and investment of public funds, especially as set out in NMSA 1978, Section 6-10-10, as amended. These restrictions are discussed in detail below.

- To the extent the City intends to use unspent bond proceeds, bond reserves, other reserve funds, or permanent funds either as capital or as initial bank deposits, restrictions contained in the documents creating those proceeds, funds, and reserves will need to be analyzed on a case-by-case basis to determine whether such use is permitted.

- Analysis of funds available to capitalize a Public Bank is critical to determining the feasibility of establishing a Public Bank and we believe should be a major focus of the Task Force.

d. Supervision and Operation of a Public Bank

As noted above, and in Appendix 11, the Public Bank will be subject to supervision by at least three different Federal and State agencies. The FID will supervise the Public Bank on behalf of the State; the Federal Reserve and the FDIC will supervise the Public Bank under Federal law. (The OCC is only implicated for nationally-chartered banks, and would have no supervisory authority over a state-chartered bank.)

The FID, the Federal Reserve, and the FDIC all have extensive reporting requirements for chartered or member banks. *See*, e.g., § 58-1-39, (prescribing the form of bank records); § 58-1-40, (requiring reports of the bank's condition to be made to the FID); § 58-1-46, (providing for bank examinations by the FID). The Public Bank will therefore incur significant expenses in complying with record-keeping, reporting, and examination requirements arising under State and Federal law.

We also note that there are certain provisions dealing with loan portfolio diversification, which may impact the proposed operations of the Public Bank, and in particular its ability to focus on a particular area of public lending. § 58-1-21; § 58-1-24. A detailed examination of the proposed lending operations, and their compliance with these statutes and regulations, will therefore need to be made.

e. Rules against Self-Dealing

If one of the purposes of establishing the Public Bank is to allow lending to the City itself, or underwriting City loans and bonds, Federal law may limit that activity. 12 U.S.C. § 371(c), 12 C.F.R. § 225.4(a)(1). These are usually "affiliate" rules that apply to inter-bank lending. It is not clear yet how they would apply to a publicly owned bank – but this would be important research to undertake, depending on what the City proposes to have the Public Bank do. One concern with a Public Bank is obviously integrity, political influence in lending decisions, self-dealing, and similar potential for corruption. Numerous Federal statutes under both the banking and criminal codes prohibit self-dealing with for owners, directors, managers, and employees of banks. *See, e.g.*, 12 U.S.C. § 376, 18 U.S.C. § 215 (prohibiting and imposing stiff penalties for self-dealing by owners and directors of banks – penalties can go up to $1MM per offense). The City would need to understand how those would apply both to a chartered bank, and to a municipally-created financial institution, as well as how various State sunshine laws (Open Meetings Act, e.g.) might apply to the Public Bank, and to other necessary entities, for example, a BHC that owns the Public Bank.

2. Special Restrictions on functions of a Public Bank

a. Anti-Donation Clause

On its face, the Anti-Donation Clause, might seem to prohibit a number of traditional banking functions, including some of those set out in the Resolution, (*e.g.,* the Anti-Donation Clause, § 2(a), refinancing the City's existing debt, the Anti-Donation Clause, § 2(b), financing capital projects, and *Id.*, at p. 3, participating in financially sound loans), and some of those discussed in the Feasibility Study, (*e.g.*, p. 1, loaning funds to the Public Bank, refinancing of debt, increasing community development lending). Additionally, the Anti-Donation Clause might seem to prohibit possible future functions of the Public Bank, such as making consumer home mortgage loans to individuals, or making commercial loans to businesses.

New Mexico case law, as set out below, addresses primarily the "donation" prohibition of the Anti-Donation Clause, and not the portion dealing with the lending of credit. Case law from sister-state jurisdictions, many of which have constitutional provisions very similar to New Mexico's Anti-Donation Clause, almost uniformly supports the kinds of activities proposed for the Public Bank. We therefore believe that a case can be made that the Public Bank, once formed, can engage in the proposed banking activities set out in the Resolution and Feasibility Study, and other private banking functions too. However, we cannot say with any assurance that the law is settled, or that the Supreme Court of New Mexico would adopt the reasoning from other states, and find that the proposed functions of the Public Bank are indeed constitutional.

(1) The Anti-Donation Clause of the New Mexico Constitution

The Anti-Donation Clause states in pertinent part:

> Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad….

We note two matters at the outset: (1) at issue here is the "lend or pledge its credit" language, and not the "make any donation" language, as the City is not proposing to make a donation, as set out more fully below; and (2) the Anti-Donation Clause applies to the lending of credit to both public and private corporations.

The question is therefore, what forms of Public Bank activity might constitute a "lending of credit" within the meaning of the Anti-Donation Clause? The primary functions we consider below, (although the list is not exhaustive), are: (1) purchase of municipal securities; (2) extensions of credit to consumer home purchasers; and, (3) extensions of credit to commercial enterprises. The first function is clearly contemplated by the Resolution and Feasibility Study. The other two are traditional functions of community banks, and are potential functions of the Public Bank.

(2) Bank Holding Company

Before turning to that question, we note, as set out above, that the Public Bank must be owned by a BHC pursuant to the State Banking Act. § 58-1-52. The BHC will be the owner of the Public Bank. The BHC will be entirely owned by the City; it will therefore be a public corporation. Therefore, the Anti-Donation Clause applies to the City's relationship with the BHC. As a result, one question is whether the City can hold shares in the BHC, or whether that would constitute a "lending of credit" prohibited by the Anti-Donation Clause. (An additional question is whether ownership of the shares of a BHC is a permitted investment of City funds. This is discussed below). The second question is whether the Public Bank's proposed activities would violate the Anti-Donation Clause, as it prohibits even an indirect lending of the City's credit; because the Public Bank's capital will be derived indirectly from the City, through subscription by the BHC as well as deposit of City funds, use of that capital to, e.g., purchase municipal securities, may constitute both a direct and indirect lending of the City's credit.

(3) Case Law Under the Anti-Donation Clause

Some case law under the Anti-Donation Clause would seem to flatly prohibit at least some of the proposed activities. "Article IX, Section 14 … has been construed by this Court to prohibit a municipality from aiding non-governmental enterprises." Hotels of Distinction West, Inc. v. City of Albuquerque, 1988-NMSC-047, 107 N.M. 257, 755 P.2d 596, ¶ 4, (citations omitted), and *id.* at ¶ 7, ("The antidonation clause clearly proscribes the lending of public funds for private purposes.")

At the least, this language, if controlling, would preclude a Public Bank from making loans for private mortgages or to commercial entities. The first statement could be read even more broadly, to preclude the City from purchasing shares in the BHC, or making deposits in the Public Bank which would in turn be used to purchase municipal securities, as the Public Bank would be engaged in non-governmental functions. We also note that the penalties for appropriations made, or other financial actions taken, in violation of the Anti-Donation Clause can be severe; in several cases, the donees of public funds were forced to return funds that were improperly give to them. *See*, State ex rel. Callaway v. Axtell, 1964-NMSC-046, 74 N.M. 339, 343, 393 P.2d 451, 454, ¶ 12, ("Public monies are trust funds belonging to the people, and must be reimbursed by the recipient if they are paid out illegally by a public official, even though in good faith…").

However, there are several exceptions to the Anti-Donation Clause which might be read to apply, and allow one or more of the contested functions.

(4) Not a Donation

While Hotels of Distinction appears to deny the power of a municipality to *lend* public funds for private purposes, the court's statement in paragraph 4 of its opinion, that it was discussing more generally "*aiding* non-governmental enterprises," (emphasis supplied), is more accurate. Specifically, the question before the Hotels of Distinction Court was whether the city could create $3 million of public improvements on public property that would be of incidental benefit to the developer of a private hotel. 1988-NMSC-047, ¶ 7. The court found that, because the improvements would be owned by the City, the fact that incidental benefits were derived by a private person did not violate the Anti-Donation Clause. *Id.*

In reaching that conclusion, the Court cited with approval its own prior decision in Village of Deming v. Hosdreg, 1956-NMSC-111, 62 N.M. 18, 303 P.2d 920. In that case, the Court considered the constitutionality of a statute that permitted municipalities and other entities to "acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state…" *Id.*, ¶ 3. The act in question further empowered municipalities to issue bonds, and to use the proceeds of the bonds to construct the facilities that would then be acquired by or leased or sold to private individuals. Those bonds would payable solely from the revenues derived from the project, and would not be the general obligations of the municipalities or the state. *Id.*, ¶ 6.

The Hosdreg court looked past the way the question had been presented, as one involving "aid" to private industry, and instead focused on the actual language of the Anti-Donation Clause, which prohibits "donations" to public or private corporations. Because a donation meant a gift, or something given without equal exchange of value, there was no donation where the project was sold or leased to the private individual, even though the project had initially been funded with the proceeds of public bonds. *Id.*, ¶ 36-37. Hosdreg has since been cited repeatedly for the proposition that the Anti-Donation Clause only prohibits gifts of public money, and does not forbid bargained-for exchanges. *See*, e.g., City of Raton v. Arkansas River Power Authority, 600 F. Supp.2d 1130, 1147 (D. N.M. 2008) (citing Hosdreg, and listing the cases where an outright gift has been prohibited.); State ex rel. Office of the State Engineer v. Lewis, 2007-NMCA-008, 141 N.M. 1, For example, in Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406 (Utah 1986), the Utah Supreme Court considered whether a statute which specifically permitted an agency of the state, the Utah Technology Finance Corporation ("UTFC"), "to provide capital for equity investment or to make direct loans to assist and encourage emerging and developing small businesses." *Id.* at 408, violated Utah's anti-donation provision, Utah Const. Art. VI, Sec. 29, which prohibited municipalities from "lend[ing their] credit or subscrib[ing] to stock or bonds in aid of any .. private individual or corporate enterprise or undertaking." *Id.* at 409. The court found that the proposed scheme did not violate Utah's constitution, as lending money to a private company was not the same as lending *credit* to that company. It noted that lending credit meant "becom[ing] surety for his neighbor … The liability of the surety is always secondary, and not primary. It is a liability for the debt of another, which such other is bound to pay." *Id.* at 410-411, citing Grout v. Kendall, 195 Iowa 467, 192 N.W. 529 (Iowa 1923). But when there is a loan of state funds, the state "would be in the position of a creditor, rather than that of debtor which arises upon a loan of credit." *Id.* at 411, citing Fairbank v. Stratton, 14 Ill.2d 307, 152 N.E.2d 569 (Ill. 1958). Lending of existing, or surplus, funds therefore does not constitute a lending of credit within the constitutional prohibition. The Utah Supreme Court noted that the great majority of other jurisdictions had reached the same conclusion. *See, id.* at 410, citing to Johns Hopkins University v. Williams, 199 Md. 382, 86 A.2d 892 (Md. 1952) (which reviews all the cases considering the issue, up to that date). *And see,* Bordeleau v. State, 18 N.Y.3d 305, 960 N.E.2d 917, 937 N.Y.S.2d 126 (N.Y. 2011) (N.Y. Const., Art. VII, § 8(1) prohibiting lending of credit does not prohibit donation of funds to public corporation for purposes of economic development); Engelking v. Investment Board of the State of Idaho, 458 P.2d 213, 218 (Idaho 1969) (distinguishing between the loaning of state funds and loaning of state credit; "'credit' as used in this provision implies the imposition of some new financial liability upon the State which in effect results in the creation of State debt for the benefit of private enterprises. This was the evil intended to be remedied by [Idaho Const., Art. 8, § 2] and similar provisions in other state constitutions."); State ex rel. LaFollette v. Reuter, 33 Wis.2d 384, 398, 147 N.W.2d 304, 312 (Wis. 1967) (holding there was no violation of Wis. Const., Art. VIII, § 3 prohibiting lending of credit by grant of money to industrial development authority as "[t]here is no loaning of credit … unless the state becomes legally obligated for a debt."); Copley v. County of Fentress, 490 S.W.2d 164, 169 (Tenn. App. 1972) (same); Dearmond v. Alaska State Development Corp., 376 P.2d 717, 722 (Alaska 1962) (holding that where funds for state development authority were raised from bond sale, and then loaned by authority to private companies for the purpose of economic development, there was no violation of Alaska's anti-donation law; "The funds realized from the sale of certificates will come from private sources. The credit of the state is not being pledged.")

There is therefore considerable authority for the proposition that the state or a municipality may lend money, even to a private company, as such lending is not a lending of the public body's credit. While no New Mexico case is directly on point, the reasons given by sister-state courts for holding such lending constitutional are consistent with New Mexico public policy and judicial decisions.

c. No Prohibition on Stock Purchases

We also note that the form of capitalization may be affected by the Anti-Donation Clause. Companies usually have two ways of raising capital: either by (1) issuing stock or similar forms

150 P.3d 375, ¶ 49, ("Any 'aid to private enterprise' must have the character of a donation 'in substance and effect' in order to violate the anti-donation clause."), *quoting* Hosdreg, *Id.*, at ¶ 32.

N.M. Att'y Gen. Op. 02-02 (2002) applies a similar analysis. (development agreement under which home rule municipality reimbursed developers for cost of public infrastructure improvements found not to violate the Anti-Donation Clause).

Therefore, whether purchasing shares of the BHC, depositing its funds in the Public Bank, purchasing municipal securities, or lending money to individuals and business for home-buying or commercial purposes, the Public Bank would be entering into a transaction whereby it would be receiving a bargained-for exchange in return, in the form of shares purchased, or interest received, and so no constitutional violation results.

b. Lending of Credit

Another exception to the Anti-Donation Clause's potential prohibition on the Public Bank's activities (and the City's investment in the Public Bank) arises from the meaning of the phrase "lending of credit." While Hotels of Distinction appears to make a sweeping statement that public money may never be loaned to a private entity, this statement is dictum, as the issue of whether the City of Albuquerque was "lending its credit" to the private company was not at issue in that case.

Case law from New Mexico and other jurisdictions supports the view that municipalities can indeed loan money to both public and private corporations. Those cases define "lending credit" as agreeing to become a debtor in the future, whereas by lending money to another the municipality becomes a creditor; becoming a creditor is not prohibited by these clauses, only becoming a debtor is.

In City of Clovis v. Southwestern Public Service Co., 49 N.M. 270, 161 P.2d 878 (1945), a challenge was brought against the sale by the City of Clovis of its municipally-owned utility to a private company. At issue were the terms of the financing of the purchase, which allowed the purchaser to make twenty-four annual payments of the purchase price; this arrangement allegedly violated the Anti-Donation Clause as lending the city's credit to the purchaser. The New Mexico Supreme Court disagreed. There was no lending of credit because "the debts and liabilities of the City, and the burden on its taxpayers, were not increased." *Id.* at 275, 161 P.2d at 881. The City was in the position of a creditor, and not of a debtor, as the financing would not result in a situation whereby the City would be "called upon to discharge any direct, indirect or contingent, liability whatsoever…" *Id.* at 276, 161 P.2d at 881. As in Hosdreg, there was no prohibition against the sale or lease of a public utility. *Id.* at 283, 161 P.2d at 886.

While the court in Southwestern Public Service did not address a direct lending of money by the municipality to a public or private corporation, other states' high courts have addressed this very question in the context of their similar anti-donation clauses, and have found no prohibition against the practice, for the same reasons given by the New Mexico Supreme Court.

For example, in Utah Technology Finance Corp. v. Wilkinson, 723 P.2d 406 (Utah 1986), the Utah Supreme Court considered whether a statute which specifically permitted an agency of the state, the Utah Technology Finance Corporation ("UTFC"), "to provide capital for equity investment or to make direct loans to assist and encourage emerging and developing small businesses." *Id.* at 408, violated Utah's anti-donation provision, Utah Const. Art. VI, Sec. 29, which prohibited municipalities from "lend[ing their] credit or subscrib[ing] to stock or bonds in aid of any .. private individual or corporate enterprise or undertaking." *Id.* at 409. The court found that the proposed scheme did not violate Utah's constitution, as lending money to a private company was not the same as lending *credit* to that company. It noted that lending credit meant "becom[ing] surety for his neighbor … The liability of the surety is always secondary, and not primary. It is a liability for the debt of another, which such other is bound to pay." *Id.* at 410-411, citing Grout v. Kendall, 195 Iowa 467, 192 N.W. 529 (Iowa 1923). But when there is a loan of state funds, the state "would be in the position of a creditor, rather than that of debtor which arises upon a loan of credit." *Id.* at 411, citing Fairbank v. Stratton, 14 Ill.2d 307, 152 N.E.2d 569 (Ill. 1958). Lending of existing, or surplus, funds therefore does not constitute a lending of credit within the constitutional prohibition. The Utah Supreme Court noted that the great majority of other jurisdictions had reached the same conclusion. *See, id.* at 410, citing to Johns Hopkins University v. Williams, 199 Md. 382, 86 A.2d 892 (Md. 1952) (which reviews all the cases considering the issue, up to that date). *And see,* Bordeleau v. State, 18 N.Y.3d 305, 960 N.E.2d 917, 937 N.Y.S.2d 126 (N.Y. 2011) (N.Y. Const., Art. VII, § 8(1) prohibiting lending of credit does not prohibit donation of funds to public corporation for purposes of economic development); Engelking v. Investment Board of the State of Idaho, 458 P.2d 213, 218 (Idaho 1969) (distinguishing between the loaning of state funds and loaning of state credit; "'credit' as used in this provision implies the imposition of some new financial liability upon the State which in effect results in the creation of State debt for the benefit of private enterprises. This was the evil intended to be remedied by [Idaho Const., Art. 8, § 2] and similar provisions in other state constitutions."); State ex rel. LaFollette v. Reuter, 33 Wis.2d 384, 398, 147 N.W.2d 304, 312 (Wis. 1967) (holding there was no violation of Wis. Const., Art. VIII, § 3 prohibiting lending of credit by grant of money to industrial development authority as "[t]here is no loaning of credit … unless the state becomes legally obligated for a debt."); Copley v. County of Fentress, 490 S.W.2d 164, 169 (Tenn. App. 1972) (same); Dearmond v. Alaska State Development Corp., 376 P.2d 717, 722 (Alaska 1962) (holding that where funds for state development authority were raised from bond sale, and then loaned by authority to private companies for the purpose of economic development, there was no violation of Alaska's anti-donation law; "The funds realized from the sale of certificates will come from private sources. The credit of the state is not being pledged.")

There is therefore considerable authority for the proposition that the state or a municipality may lend money, even to a private company, as such lending is not a lending of the public body's credit. While no New Mexico case is directly on point, the reasons given by sister-state courts for holding such lending constitutional are consistent with New Mexico public policy and judicial decisions.

c. No Prohibition on Stock Purchases

We also note that the form of capitalization may be affected by the Anti-Donation Clause. Companies usually have two ways of raising capital: either by (1) issuing stock or similar forms of equity; or, (2) borrowing, either through debt instruments or the issuance of certificates or bonds or other evidence of indebtedness. New Mexico's Anti-Donation Clause prohibits "lending credit", but, unlike other states' constitutions, does not prohibit the purchase of shares or other forms of equity. *See, e.g.*, Utah Const., Art. VI, § 29 (prohibiting share purchases); Md. Const., Art. III, § 34 (prohibiting the exchange of state or municipal securities for private equity); Idaho Const., Art. VIII, § 2 (prohibiting purchase of stock of private corporations); Ky. Const., § 177 (prohibiting purchase of private equities); Ariz. Const., Art. IX, § 6 (prohibiting purchase of private equities).

All these states (and the list is not exhaustive) have permitted the lending of state funds to private businesses, despite anti-donation clauses broader than New Mexico's. But because they also contain prohibitions against stock ownership, whereas New Mexico Anti-Donation Clause does not, it may be inferred that there is no constitutional bar on the use of public funds by New Mexico municipalities to purchase the stock of private or public corporations. For this additional reason, we believe that the Anti-Donation Clause may permit both the ownership by the City of shares in a BHC and, even if the Public Bank cannot lend to private corporations, equity investment by the Public Bank in private corporations through purchase of their shares, absent any other legal impediment to such purchases.

d. Conclusion

We therefore believe that a valid argument can be made that both the purchase and ownership by the City of shares in a BHC, and the use of monies deposited by the City with the Public Bank to make purchases of public securities, to issue private mortgages, and to lend money to private corporations, does not violate New Mexico's Anti-Donation Clause. However, we caution that these functions may well be subject to a legal challenge, and that the law is not settled, and therefore that the State Supreme Court could reach a result unfavorable to the City. In fact, the FID Legal Memo concludes that the Anti-Donation Clause may be a prohibitive factor in the formation of a Public Bank. If the FID applies that reasoning in reviewing a Public Bank application from the City, that could form the basis for denial of the application. We recommend the City explore this issue with the FID before proceeding to prepare an application.

e. State Law and Regulations Applicable to Investment of Public Funds

Various State laws and regulations also apply to the investment of public funds, including municipal funds, and may either restrict the ability of the City to invest its money with the Public Bank, or at least will require compliance with additional regulations by the Public Bank in order to be able legally to accept deposits of City funds.

In the first instance, the New Mexico Constitution provides that "All public money not invested in interest-bearing securities shall be deposited in national banks in this state, in banks or trust companies incorporated under the laws of the state [and in savings and loan institutions]." N.M. Const. art. VIII, § 4. To the extent that the City is depositing public money in the Public Bank, its actions would be consistent with this provision. However, there may be a question as to whether use of public money to capitalize the BHC, and ultimately the Public Bank, might violate it. Specifically, use of public money to purchase the shares of the BHC, which would in turn be used to subscribe the capital of the Public Bank, might be seen to run afoul of this section.

There is no applicable case law interpreting this section of the Constitution. One Attorney General's Opinion stated that this provision prohibited lending to private individuals. *See*, N.M. Att'y Gen. Op. 33-667 (1933-34). However, more recent opinions state that public money may be loaned to resident students for educational purposes, N.M. Att'y Gen. Op. No. 70-23 (1970), or invested in mutual funds, investment trusts, and other conduit vehicles. N.M. Att'y Gen. Op. No. 00-03 (2000). Therefore, there is at least some support for allowing the deposit or investment of public money, even when those monies will be subsequently invested by the investment vehicle. And, indeed, this is a primary banking function; to require public money to be invested in charted banks is to acknowledge that such funds will be subsequently loaned out for various purposes by those banks, in order to provide the return on the depositors' investment or deposit. The fact that the bank is a Public Bank should not change the outcome.

Furthermore, NMSA 1978, Sections 6-10-1 to -63, as amended, referred to herein as the "Public Money Act", will apply to the City's investments and deposits of its monies, and to the Public Bank, should it wish to accept such deposits. And the most critical section of the Public Money Act is Section 6-10-10, as amended, which controls the deposit and investment of public funds.

Section 6-10-10(A), of the Public Money Act, states in pertinent part that "[u]pon certification or designation of a bank … whose deposits are insured by an agency of the United States to receive public money on deposit, the … municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks … designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers." (emphasis supplied). Municipal treasurers may also invest bond sinking funds, unexpended bond proceeds, and money "not immediately necessary for [their] public uses" in certain governmental securities. § 6-10-10(F). And municipalities of greater than 65,000 population located in Class A counties may invest those funds directly in additional types of funds and investment trusts. § 6-10-10(G). Significantly, the City Charter, Section 9.01, requires that the City "follow the Laws and policies of the State of New Mexico regarding investment of public funds." This City Charter provision may effectively negate the City's home rule authority as it relates to the investment of funds, providing significant constraints on how the Public Bank can be capitalized.

In order for the City's funds to be deposited with the Public Bank, therefore, the Public Bank must be designated as an authorized depositary. In order to become such an authorized depositary, the Public Bank will, among other things, have to give its surety or bond, in an amount to be determined by the municipal treasurer. § 6-10-15. Such security must usually itself be in the form of federal, federally-guaranteed, or municipal securities. § 6-10-16(A). There is a limited exception for deposits insured by the FDIC, § 6-10-15(B), but as such insurance is limited to $250,000 per account, the exception is of small practical value. Additional detailed requirements are set out in the Public Money Act. *See*, §§ 6-10-10 to -24.

While the Public Money Act clearly applies to the City's use of its funds, including those funds currently proposed to be used to capitalize the Public Bank, and to make the initial deposit of funds to the Public Bank, it is not clear that the Public Money Act would apply to the Public Bank itself (other than applying to the security the Public Bank would need to keep against the deposit of the public monies by Section 6-10-15). In other words, it is not clear whether the Public Bank itself would be constrained from, e.g., loaning the money to a private company by the Public Money Act, as an impermissible investment of public funds. The Public Money Act would not appear to apply indirectly; it does not constrain private banks' use of deposited public funds. However, an argument might be made that the Public Money Act does apply to a public, municipally-owned and financed public bank.

In addition, various subsections of Section 6-10-10, of the Public Money Act, may operate to constrain the use of public funds to capitalize the Bank. For example, Section 6-10-10(E), provides a deposit means either an investment or a deposit. In practical terms, that may mean that the City's investment in the Public Bank, either directly through deposit of City funds with the Public Bank, or indirectly, through use of City funds to capitalize the Public Bank – which would likely be considered an investment of City funds – would have to comply with the statute. Section 6-10-10(H), also provides an avenue for the investment of surplus public funds in guaranteed investment contracts and similar investments. The question under that subsection – and the other identified subsections relating to investment of public funds – is whether, under either the home rule analysis set out above, or under Section 9.01 of the City Charter, the existence of these investment laws means that the City is precluded, by negative implication, from setting up the Public Bank, or whether, because there is no express denial of the City's ability to use its funds to capitalize a Public Bank, or to invest in a Public Bank so long as it satisfies the requirements of Section 6-10-10, the City has implied authority to do so. The answer to this question is additionally complicated by the fact that, as set out above, New Mexico's Anti-Donation Clause, unlike many other states', does not prohibit public ownership of equities. So multiple implications regarding the City's powers to set up a BHC, purchase its shares, and capitalize the Public Bank may be drawn from different laws.

We also note that the City's budget is subject to supervision by the Department of Finance and Administration. *See*, e.g., § 6-6-2. Whether operations of the Public Bank would also be subject to such budgetary supervision is an open question.

Further the City is required to be audited annually under the State Audit Act, NMSA 1978, Sections 12-6-1 to -14, as amended. How the State Auditor views the activities of the City in establishing and operating a Public Bank, and the operations of the Public Bank itself, will be critical to the ability of the City to effectively operate a Public Bank.

B. Other Issues Under Federal and State Laws

1. Federal Laws

Again, depending on the types of service that the Public Bank intends to provide, it may potentially be subject to a host of Federal and State laws. A *non-exhaustive* list of only Federal laws that might come into play: (i) Truth in Lending Act; (ii) Fair Credit Reporting Act and

Regulation Z; (iii) interest rate regulations (formerly Regulation Q, now other scattered regulations that provide authority to various federal institutions to cap interest rates on not only loans, but also savings and checking accounts, and other commercially available financial instruments and products); (iv) Fair Credit Billing Act; (v) Electronic Funds Transfer Act; (vi) Right to Financial Privacy Act; (vii) Equal Credit Opportunity Act and Regulation B of the Federal Reserve Board; (viii) Community Reinvestment Act; (ix) Dodd-Frank; (x) Foreign Account Tax Compliance Act and (xi) regulations issued by the Consumer Financial Protection Bureau. This list is not exhaustive, and what is finally included on it will in large part depend on which services the Public Bank ultimately offers. It is not inconceivable that the Public Bank could also be subject to regulation by the United States Securities and Exchange Commission and other federal agencies that regulate non-banking financial services, including underwriting and financial advisory services, if the Public Bank intends to perform such functions. Additionally, operations of the Public Bank may be subject to supervision by the Federal Reserve, even if the Public Bank is not federally chartered, and will potentially be subject to extensive reporting requirements and complex regulations from those agencies.

2. State Laws

There are numerous State laws applicable to public entities that may apply to a Public Bank. The following is a list of those that have come to our attention in the course of preparation of this memorandum:

- Open Meetings Act;
- Inspection of Public Records Act;
- Procurement Code;
- Audit Act; and
- Laws applicable to disposition of property.

Appendix 1

City Council Resolution No. 2017-32, adopted April 26, 2017

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2017-32

INTRODUCED BY:

Councilor Renee D. Villarreal	Councilor Carmichael A. Dominguez
Councilor Joseph M. Maestas	Councilor Peter N. Ives
Councilor Signe I. Lindell	Councilor Mike Harris

A RESOLUTION

REQUESTING THE FINANCE DEPARTMENT STAFF TO PROVIDE THE GOVERNING BODY WITH AN ASSESSMENT OF THE CURRENT FINANCIAL MANAGEMENT PRACTICES AS THEY PERTAIN TO THE FINDINGS IN THE PUBLIC BANKING FEASIBILITY STUDY; AND CREATING A TASK FORCE TO DETERMINE THE PROCEDURES, TIMELINES AND REQUIREMENTS THAT WOULD BE NECESSARY TO ESTABLISH A CHARTERED PUBLIC BANK AND TO MAKE RECOMMENDATIONS TO THE GOVERNING BODY IN PREPARATION FOR THE GOVERNING BODY TO MAKE AN INFORMED DECISION.

WHEREAS, the primary goal and intent of continuing to explore the possibility of establishing a chartered public bank in Santa Fe is to continue the ongoing enhancement of responsible stewardship of public funds; and

WHEREAS, the call for a chartered public bank was initiated by the public, and the mayor then convened local and national leaders to a forum in June 2014 to begin the discussion of a public bank for the City of Santa Fe; and

WHEREAS, the city participated in an international broadcast symposium on public banking on September 27, 2014 with participants including civic leaders and citizens from across the nation and the world; and

WHEREAS, on October 20, 2014 the governing body approved a study be completed to explore the feasibility of establishing a public bank for the City of Santa Fe, and in 2015 the city contracted a study to explore the feasibility of establishing a chartered public bank for the city of Santa Fe; and

WHEREAS, on September 25, 2015 David Buchholtz of Rodey Law Firm provided a legal memorandum to the *WeArePeopleHere!* Educational Fund with perspectives on a public bank, and;

WHEREAS, the feasibility study was completed in January, 2016 and the findings reported to the public: a) areas for improvement in the city's liquidity management, investment performance-and capital financing administration, and b) that there could be financial benefit to the city if a chartered public bank were implemented; and

WHEREAS, the feasibility study did not address the process and responsibilities related to establishing a chartered public bank; and,

WHEREAS, since the completion of the feasibility study, several other municipalities and states are on active developmental tracks pursuing a public bank.

WHEREAS, since the completion of the feasibility study, the Governing Body adopted significant financial reforms that include, but are not limited to: updated financial policies for cash management and investments, a balanced budget policy in which recurring expenditures are only paid with recurring revenues, a one-year capital budget, and a 5-year capital improvement plan; and

WHEREAS, since the completion of the feasibility study the City's Finance Department has established a Treasury division; examined the City's cash and investment policies and practices and adopted improvements; eliminated unnecessary fund accounts; restructured the City's debt portfolio and initiated an inter-fund loan policy in response to a recent bond transaction; and

WHEREAS, the City's 2017-2018 capital improvements plan identified more than $8.8 million in unfunded needs for the next fiscal year; and

WHEREAS, financing infrastructure projects through bond issue increases costs to projects; and

WHEREAS, by potentially reducing the City's borrowing costs and capturing interest that would otherwise be paid to private investors, with a chartered public bank, the city can continue to participate in financially sound loans that promote our public welfare; and

WHEREAS, the City acknowledges opportunities remain to further improve the financial policies and practices of the City government; enhance and leverage relationships with other public and private financial institutions; and that it is ready to determine the potential role for a public bank.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE: Within thirty (30) days the city Finance Department will provide a written report to the Governing Body and the public that details the changes in policy and practice for treasury, cash management and investment, and bank services since the completion of the Public Bank feasibility report and that identifies the significant opportunities that remain to further improve the financial policies and practices of the city government.

BE IT FURTHER RESOLVED that the mayor will appoint, with the approval of the governing body, members of a Public Bank Task Force within sixty (60) calendar days of adoption of this resolution.

PURPOSE: The sole purpose of the Public Bank Task Force is to provide the governing body with the information needed to make an informed decision about the pros and cons of submitting an application for a New Mexico Bank Charter for a Public Bank of Santa Fe.

DUTIES AND RESPONSIBILITIES: The task force shall consider the processes, resources, risks and timelines necessary for the governing body make an informed decision, and shall examine the following through the course of their work:

A. Work with legal experts in the field of public finance, banking and law to determine the regulatory constraints that are applicable under the legal structure of the Public Bank, as well as a legal opinion from the City Attorney.

B. Investigate the legal steps necessary to establish a public bank, such as obtaining necessary municipal, state and federal approvals; and identify the legally required components of a potential enabling ordinance; and

C. Investigate and make recommendations on bank governance structures that provide transparency and accountability to the public and maintenance of high ethical standards; and

D. Investigate and make recommendations on the capitalization options, sources and methods, and underwriting parameters; and

E. Examine the de novo bank procedure in the state of New Mexico, its work components, responsibilities and timelines and identify those work components that may require work beyond the scope of the Task Force or City Staff;

F. Draft a five-year business plan per de novo bank procedure requirements that:

1. Identifies a potential purpose for a chartered public bank for Santa Fe, and

2. Recommends options for phasing of implementation for consideration that includes:

a) Refinancing the City's existing debt, and

b) Financing currently identified capital improvement projects, and

c) Consider the long term, potential implications of partnering with other public institutions.

3. Identifies the one-time, as well as recurring costs associated with the creation and operation of a public bank.

MEMBERSHIP; OFFICERS; TERMS: The task force shall consist of a facilitator and nine (9) members that shall have the following credentials:

A. One (1) member to be the director of the city finance department, or their representative as needed.

B. Three (3) members with financial and/or banking experience who are currently employed by or retired from a community bank, a community credit union, and/or a community development financial institution (CDFI) in New Mexico; and

C. Two (2) members with legal experience in public finance and the banking industry in New Mexico.

D. One (1) member with federal and state regulatory experience in the banking industry.

E. Two (2) residents at large.

F. At least one of these nine members shall have expertise in governance models that provide for transparency and accountability to the public for bank operations and decisions. The Mayor, with the approval of the Governing Body, shall designate the chairperson; the vice chairperson shall be designated by the chairperson. The members shall serve until they complete their duties and responsibilities as set forth above.

VACANCIES: Vacancies on the Public Bank Task Force shall be filled in the same manner as initial appointments. Members shall serve without compensation.

MEETINGS; DURATION: Staff shall identify and utilize a third party facilitator who in coordination with the chairperson shall lead the task force meetings. The chairperson shall coordinate with the professional facilitator to convene the task force within ninety (90) calendar days of adoption of this resolution by the governing body, facilitate meetings, take notes, schedule task force meetings and complete the work of the task force. The task force shall hold at least two (2) public meetings between three (3) and six (6) months from the first meeting to report to residents on their progress, to hear public comment, and to assure transparency and accountability to the public of the task force's efforts toward a coherent plan for the work necessary to determine the merits of establishing a public bank in Santa Fe. The task force shall report to the finance committee on the progress of their work after three (3) months of its first meeting. That the task force shall complete its work within six (6) months of its first meeting and provide a formal written and oral report of its findings and recommendations to the Finance Committee, and then to the Governing Body at a public meeting that provides for public comment.

PASSED, APPROVED AND ADOPTED this 26th day of April, 2017.

Javier M. Gonzales

JAVIER M. GONZALES, MAYOR

ATTEST:

Yolanda Y. Vigil

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Resolutions 2017/2017-32 Public Bank Task Force

Appendix 2

Public Banking Feasibility Study, Jan 2016

PUBLIC BANKING FEASIBILITY STUDY

FINAL REPORT

for the

The Oldest Capital City in the United States

Consultants

Katherine L. Updike, Managing Partner
Building Solutions LLC

Christopher Erickson
Arrowhead Center
New Mexico State University

January 2016

Table of Contents

Executive Summary

A public banking initiative for the City of Santa Fe is feasible and has the potential to provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate. This need not be accomplished solely by starting a public bank, but rather also can be done by improving and integrating current City financial activities, using the relationship with local lenders to greater economic advantage, and encouraging new modes of lending to improve the over-all financial system in the region.

The recommended approach is deliberate and recognizes the need to treat any changes in financial policy at the City with the caution warranted when managing public assets. A staged approach encompasses the following steps, more fully explained in the body under The "Strawman," the description of a Santa Fe bank that allowed the Consultants to actually analyze specific fiscal and economic impacts:

- Fund more of the City's capital improvement projects with internal funds. Use current bond underwriting practices to vet the projects. This substantially reduces the current interest rate differential between invested cash and borrowed cash of at least 2 to 3% per year. This also requires streamlining fund balances accounting and clearly segregating operating and capital accounts.
- Review and implement alterations to the collateral policy of the City. In conjunction with the City's banking depositories (banks), develop strategies to increase local lending, including increased funding to local Community Development Financial Institutions and Credit Unions. This helps address the most under-banked segment of the market, and could over time help combat the predatory lending practices of pay-day lenders.
- Charter the City's banking operation and broaden the interdepartmental funding strategy to other public entities in Santa Fe, such as the County and School District, if they choose to participate.
- Encourage and broaden use of crowdfunding techniques which may help the sourcing and funding of smaller loans. The City may even use such a technique to fund smaller City-sponsored capital improvement projects, as an alternative to raising taxes or using limited bond proceeds.
- As and when loan demand increases, participate upon request (and approval) in up to 50% of loans underwritten by the banks that qualify under a Local Economic Development plan.

Most of the actions above can and should be launched even before a bank or mutual fund State charter is obtained. The State charter requires the creation of an independent board which may help raise the confidence in the bank as an *independent* and more transparent public entity.

Legal and administrative requirements remain and should be further examined in a more detailed implementation plan, if staff and City Council approve moving forward to implement the strategies described in this report. The ultimate feasibility of the plan will depend upon these crucial steps. The projected fiscal and economic impact to the City exceeds $24 million in the first seven years, based upon assumptions of how much of the City's deposits are deployed in self-funding and reduced collateral programs. The community support for the approach outlined depends on the actual implementation plan. There is a high degree of skepticism surrounding governance, which should be a major focus of any actual "roll-out" of a public bank.

This study has been a challenge given the disparate views on public banking. Our research suggests that the strategies are viable and beneficial to the City. It is based upon a broad review of local and national conditions described in the section entitled Consensus Document. This due diligence helps explain much of the staged approach, but it also helped develop a measure of agreement among even the most divergent viewpoints. In general, the City's constituents all want a program that enhances the City's financial well-being and transparency. We think this does both. Thank you for letting us work on this project.

Introduction

Background and Purpose

The banking sector of the U.S. economy has had a continuous, strong relationship to the government sector. At the Federal level the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation all have an intertwined relationship with both private banks and quasi-public institutions, acknowledging the importance of cooperation between commerce, governance, and the well-being of society. At various junctures in our history imbalances have occurred which have triggered government responses, some temporary and some much longer lasting. The most recent crisis, the 2008 mortgage implosion, engendered a massive injection of liquidity into the banking system, institutional bailouts, and tighter commercial bank regulations. It also triggered a popular angst, generally summarized as, "Wall Street vs. Main Street." It is in this context that the City of Santa Fe boldly questioned whether or not it would make sense to embrace the public banking movement which began to surface around the country. This national movement was responding not just to the 2008 mortgage crisis, but also to the loss of community decision making, as over half of the community banks have been lost to mergers into much larger (and distant) organizations in the last 30 years.

The scope of the Public Banking Feasibility Study commissioned by the City of Santa Fe includes:

- **Draft a Consensus Document:** Understand the current financial environment
- **Consult Others**: Develop an understanding of the community's interest, concerns, and contributions to a public banking initiative
- **Identify a "Strawman"**: Describe a potential approach to establishing a public bank which can then be specifically evaluated for feasibility.
- **Articulate Risks**: Give voice to concerns and identify methods of addressing the risks
- **Quantify the Impacts**: Provide to the City some measurable and objective quantification of a public banking initiative

This document will incorporate much of the content in prior deliverables. Some of the information has been condensed, or edited, in order to provide a more coherent and complete presentation. Additionally various community and city presentations have been incorporated, where graphs or pictures can enhance the presentation. At times, throughout the engagement, people have complained about the technical nature of the material. To some extent that cannot be avoided. In response and to the extent possible in this document, text box inserts will be used to provide layman summaries of the material.

Consultants

While the breadth of experience of the two primary consultants is appropriate and deep, it would be a major oversight not to acknowledge the hundreds of people with whom we have consulted, both one on one and in large group meetings. Over 100 meetings have encompassed well over 200 voices. A third of those meetings have been with public officials and the remainder with private sector advocates, skeptics, area experts, and finance specialists. These conversations have led to a deeper understanding of Santa Fe, local banking, City mechanics, politics, regulations, community leadership, and collective community needs from housing to planning to education. It would be appropriate to identify all of these sources, although many provided input confidentially and openly, in hopes of improving our understanding of Santa Fe. So…a collective and thoroughly insufficient acknowledgement goes out to all who generously shared knowledge and viewpoints. Thank you.

Complete CVs of the prime consultants are included in Appendix A. The following brief summary biographies provide the basis for the expertise brought by the consultants to the public banking feasibility.

Lead Consultant: Katie Updike

Ms. Updike has done extensive work in finance for over 30 years both within the private banking industry as a Managing Director in two money center banks, and as an advisor to numerous non-profits, government entities, and private sector project sponsors. She has studied North Dakota's history and the more recent study and referendum in Vermont.   With specific knowledge of community non-profit banks, impact investing, and government incentive structures, Ms. Updike has direct understanding of alternative mechanisms which communities can use to address an absence of credit to vital sectors that have become commercially "unbankable." She also has led funding initiatives addressing many community needs around the country, such as charter schools, energy and water conservancy, affordable housing, non-profit capital expenditures, historic preservation funding, and tax credit funding.

Additionally, Ms. Updike managed the relationship with the Farm Credit System and Bank for Cooperatives in the US. She worked in finance and studied in Brazil, China, and Peru, all of which have robust public banking sectors. She developed an investment memorandum (2009) for the implementation of a "border bank" which could complement the limited scope of lending provided by the North American Development Bank (NADB), a public bank authorized in 1993 by the U.S. and Mexico to fund environmental infrastructure and projects along the US-Mexico border and to address needs resulting from NAFTA.

Economic Consultant: Chris Erickson

Dr. Erickson has extensive experience in conducting economic impact studies, having done so for public sector clients, private clients and NGOs. Among his clients are New Mexico Base Closure Commission, the Lea County Development Corporation, and Sunland Park Race Track & Casino among others. Dr. Erickson is in NMSU's Economic Development Program, where he teaches graduates students in the proper methodology for conducting impact studies. He is a recognized expert on the economy of New Mexico. The study entitled "New Mexico's Public Funds Investment Policies: Impact on Financial Institutions and the State Economy" (2009), found at http://arrowheadcenter.nmsu.edu/sites/default/files/uploadecd/bankingstudy.pdf, provides baseline information for the Santa Fe public banking study, thereby reducing duplication of effort.

Limitations of the Report

Both the scope and the logic of this report by necessity have omitted several crucial elements. While legal questions have been posed and broadly answered, no legal opinion has been sought formally by the City. No over-arching legal obstacles have been identified or raised by others. However, the actual mechanics of setting up a separate legal entity by the City will require appropriate City action, resolutions, and legal documentation. Additionally, in order to undertake meaningful reviews of feasibility and economic impacts, a "strawman" was developed. This entails imagining what the entity might look like, how long it will take to implement a phased approach, and what volume of business might be done. To the extent possible, the strawman was designed as the most feasible approach for successful implementation. That said, further refinements should be made as an implementation plan is constructed, only if and after the governing body endorses the strategy and opts to move forward with the full engagement of legal, accounting, and management services.

One limitation of the report has turned into a strength. When the engagement commenced in early 2015, the City was undertaking a rigorous new budgeting effort, then the defense of the Park bond, and most recently, the evaluation of a looming budget deficit. While this study could have been derailed, instead it strengthened the thoughtful analysis of how a public banking initiative could bolster the City's financial management policy and procedures. Specifically the study has evaluated depository collateral regulations, interdepartmental cash flows, liquidity management, and Capital Improvement Project ("CIP") forecasting and funding. In other words, the study is working real-time with real issues, with the primary objective of enhancing the City's controls and professional management of its financial assets.

Brief History of Public Banking

The primary reference point in the U.S. for public banking is the Bank of North Dakota ("BND"). The BND was established in 1919 as a response to a crisis in the agricultural sector, triggered in part by reduced lending from eastern banks. It took many years for the bank to evolve into its present form. BND faced opposition from opposing political parties and from the financial sector itself. From the 1940s until the early 1960s, the bank served primarily as a public funds depository and municipal bond buyer (in essence funding intra-governmental debt). Its economic development activity has expanded as BND became a participating bank with the local banking community which helps provide liquidity to the local economy. The strengths of the state bank are impressive. It has served as an anchor to the economy (even before the oil boom), and has strengthened the private local community banks, which have remained remarkably resilient and independent, despite national consolidation trends. BND is a member of the Federal Reserve System, but not a member of the Federal Deposit Insurance Corporation (FDIC).

BND is the only state-owned public bank in the United States other than the Puerto Rico Government Development Bank. According to the Federal Reserve Bank, seven Indian tribes currently wholly own or substantially control a bank, arguably also operating as public banks. The Federal government has sponsored other types of banks. Typically these are organized as mutual institutions, owned by private sector member lenders. Examples include the Farm Credit System and the Bank for Cooperatives. These entities address sectors of the economy that suffer from lack of attention from mainstream credit institutions and tend to require specialized expertise. Similarly the eleven Federal Home Loan Banks provide specialized funding to the home loan sector. Perhaps the best known federally sponsored credit institution is Fannie Mae (Federal National Mortgage Association), founded in the Great Depression to help increase liquidity in the home ownership market. These examples of publicly sponsored banks, while not exhaustive, are now relatively independent institutions, but generally trade close to par with Federal paper. Credit Unions and Community Development Financial Institutions (CDFIs) also have had key Federal intervention and funding, primarily targeted at helping make credit available to less advantaged sectors in the economy.

Other communities that are studying public banking concurrently besides Santa Fe are California and Pennsylvania (both State and various local jurisdictions), Vermont (first step is an infrastructure funding revolving fund), and Colorado. Over 20 states have a public banking advocacy groups working with local and state officials to support public banking initiatives. The fundamental concern of all of these groups is to encourage local government entities to make a greater impact on the economic well-being of their constituents, and to increase financial stability.

Locally "Banking on New Mexico" has been the leading citizens advocacy group. A member of the New Mexico group also sits on the Public Banking Institute board of directors, the national advocacy entity. Mayor Gonzalez proposed studying a public bank as part of his election platform. A conference on public banking was held in September 2014 to broaden the understanding of the concept. Subsequently the City Council endorsed and issued a Request for Qualifications to perform a Public Banking Feasibility Study. The Mayor, various Council members, and key staff members have all been engaged throughout the study helping ensure that the consultants provide a useful and pertinent document.

The Consensus Document

Introduction

As part of the Public Banking Feasibility study, the City and Building Solutions LLC (Consultant) determined that it would be useful to survey the City's current banking sector policies and activities, as well as both local and national market conditions. This exercise helps develop an understanding of where the market is functioning as expected and where there are opportunities for the City, or for other financial sector players, to improve regional economic performance. The survey of current conditions is useful in identifying areas where making changes could improve financial sector performance (whether by the City or others). Not all of the areas covered in this document *require* the implementation of a public bank, however, they all relate to banking functions, regardless of the ownership of the institution.

Summary of Banking Sector Concerns

The concerns noted below are national and are not isolated to Santa Fe. Each region has its own nuances, however, the generalized statements have been echoed in the local market.

> *The most important finding in the Consensus Document is that the banks in Santa Fe have a lot of cash to lend and less demand for qualifying loans than they would prefer. For this reason, the Consultant does not expect that "participating in bank loans" can be a near term source of business for a public bank, as it is in North Dakota.*
>
> *Of greater importance is that the City's own balance sheet reflects a large level of cash which could be used to invest in the public sector's own debt, in essence, funding itself, rather than relying extensively on the external bond markets. The City could fund some of its own construction on capital projects, and manage its liquidity in more than one way. This would save the City money which could be used to fund City activities or mitigate taxes.*

- Banking sector liquidity, and regulatory changes in capital requirements, is reducing willingness to take large deposits, as are historically low Net Interest Margins. Will the City have difficulty placing deposits in the near future (at least until some of the financial sector liquidity is deployed/lent) or could interest rates dwindle to zero or negative levels reflecting the cost of reserves and collateral?

- Loans under $500,000 are more difficult to obtain, particularly from traditional commercial banks. Emerging web-based portals may fill some of this demand but the lack of regulatory oversight, and low borrower awareness and preparedness may limit early adoption in the region. What can or should the City do to stimulate this class of lending?

- Regulations are proving to be extremely onerous for smaller community and regional banks. The regulations may have the unintended consequence of encouraging further consolidation of local banks into larger banks, and more distant decision-making.

- All of Santa Fe's local banks appear to have acceptable Community Reinvestment Act (CRA) ratings. The implication is that deposits received in the area are being redeployed in the area[1]. This, however, is over-shadowed by the fact that Loan to Deposit ratios are at 30-year

1 Century, Community Bank, and NM Bank & Trust are listed in FDIC records as having Satisfactory CRA ratings as of 2012 and 2013 review dates. Wells Fargo Financial Bank (not specific to New Mexico) has an Outstanding rating as of its last review in 2008. Los Alamos and FNB of Santa Fe are not listed in easily accessed public records, however, they are cited as having excellent community relations.

lows nationally (implying that there is weak conversion of deposits to loans). New Mexico (and Santa Fe) loan to deposit ratios are substantially below the low national levels.

- The emergence of on-line lenders, which use both private and public data to make loan decisions, are growing quickly, and providing further competition to community banks. While they are still a relatively small sector in the market, they are filling gaps in the consumer and small business lending market. This is further complemented by the "impact investing" trends which reflect an increasing desire on the part of investors to make a difference while also making a profit.

City of Santa Fe Collateral Policy

N.B. The City of Santa Fe Finance staff follow guidance of the Government Finance Officers Association ("GFOA") for developing policies which are approved by Council, and which conform with New Mexico State laws. Finance management follows a prudent guideline that prioritizes security, liquidity and yield – *in that order*.

City policy requires 102% collateral on all bank deposits (in excess of FDIC insurance levels of $250,000). Full collateral is common among governmental entities nationwide, even though the State of New Mexico requires by statute only 50% collateral and per regulatory practices uses a tiered collateral requirement ranging from 50% to 102% based upon ratio analyses. 102% collateral levels mean that very little of the City's deposits are available to the Santa Fe community, HOWEVER, the collateral provides excellent insurance against bank credit risk. Some municipal collateral policies allow for a wider class of collateral, even including performing loans. New Mexico's statutes appear to limit collateral (50%) to high grade federally issued or insured paper and New Mexico investment grade governmental bonds, or the purchased guarantees of those entities.

The "cost of collateral" (the cost for a bank to provide collateral) is at historically low levels due to excessive liquidity and low interest rates. This means that the foregone interest revenue of full collateralization is relatively modest…maybe $100,000 to $200,000 per year[2]. This abnormally low premium for the collateral is due to the unusually high levels of excess deposits/reserves, as demonstrated in the following graph:

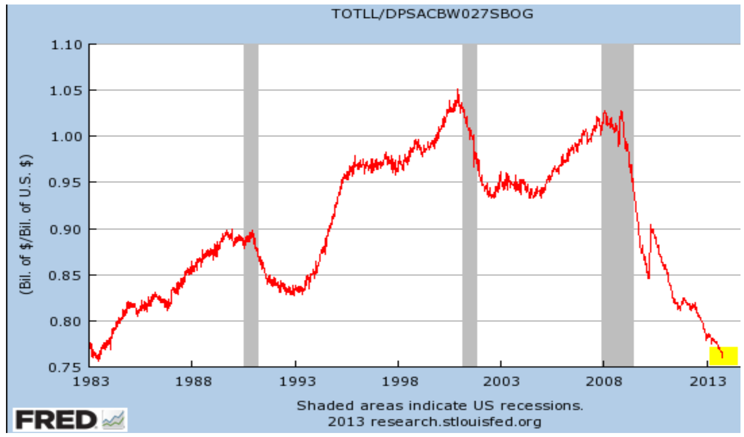
Reserves and Demand Deposits - Commercial Banks

[2] $100 million City's deposits X 10 to 20 basis point premium (.0010% to .0020%) = $100,000 to $200,000

Bank Loan to Deposit ratios also reflect the excess reserves (see chart below). This ratio is at 30 year lows due to tighter regulation, limits on real estate lending, and high excess reserves resulting from the "quantitative easing" at the Fed as noted above. Thus, if the City altered its collateral requirements, the banks might not have loan demand (or the willingness) to utilize those funds in the near term, unless safe and attractive alternative investments are identified. Santa Fe's depository banks have even lower Loan to Deposit ratios than the national average, but they appear to be higher than New Mexico's level of 66%, suggesting a sluggish lending environment.

U.S. Bank Loan to Deposit Ratios 1983 to 2013

New Mexico's depository bank ratios average about 66% - a level which is below the national average of 75%.



These conditions are expected to persist nationally for some time given low inflation, reluctance of the Fed to raise interest rates, and risk averse behavior among depositories world-wide. It is unclear why New Mexico banking institutions have loan to deposit ratios which are so much below the national averages. It could be lack of lending competition, concerns about the New Mexico economy, weaker loan demand, and/or heavier regulation. It is also possible that the relatively high level of public funds in the banking system in New Mexico creates a structurally lower Loan to Deposit ratio, given the regulatory collateral requirements.

Liquidity

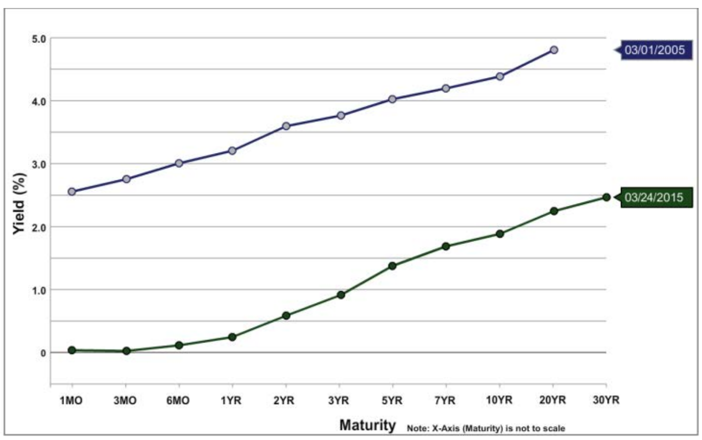
Liquidity, immediately available funds, in the City's investment portfolio (including restricted and unrestricted cash) appears excessive, although it may reflect the almost flat yield curve under one year. On demand cash (immediately available without penalty) is being maintained at $50 to $90 million. June 30, 2015 total investments of $226 million had a weighted average maturity of 283 days, or slightly over 9 months. The June 30th financial report on yield and maturity is in Appendix B. As the report illustrates, the difference between short and long term investments is between 25 and 100 basis points in foregone interest revenue for short term deposits. This level of short term liquidity, while not uncommon among government entities, reflects uncertain cash flow forecasting. *Ideally* the City would attempt to manage its investment portfolio in an improved maturity "matched" or laddered approach, reflecting a more neutral position relative to interest rate markets, and maturities which specifically match expected cash requirements. Part of the reason that the City has difficulty predicting cash usage is that most of the City's cash is "allocated" to funds, for both operating and capital expenditures. Unfortunately the number of funds (estimated at 411) makes cash forecasting and budgeting difficult, at best. At worst, it is being used to avoid good budget and capital management oversight by Council.

One further note is necessary regarding municipal liquidity. The State encourages municipalities to maintain no less than 1/12th of their budgeted expenditures in unrestricted and unassigned cash ("General Fund") as a measure of liquidity. The City's calculation was down to 35 days (or $83,278 above the 1/12th budget level) as of year-end 2014. This is a decrease from prior years and is "too tight for comfort." The State guideline may become a requirement in the future. The ratio also is monitored by the rating agencies. The excessive use of 'funds' noted above, strips the City of appropriate *predictable* liquidity, and restricts the City from making the most efficient use of its cash, both among departments and in the markets. The ratio may also penalize the City in credit assessments, which could have more serious long term consequences.

Improved cash forecasting and budgeting, even at currently depressed interest rates, could add substantially to interest earnings, even with relatively modest extensions of the weighted average maturity. If more of the City's funds were actually invested longer term – perhaps in the City's own borrowing needs, the NET interest savings would be substantially greater. Decisions such as these must be weighed against the possibility of increasing rates and liquidity needs.

The table below illustrates the Treasury rates which generally parallel bank deposit rates. The comparison between 2005 (prerecession) and 2015 illustrates not just the drop in rates, but also the flattening of the yield curve in the period under 1 year.

Comparison of Yield Curves in 2005 and 2015

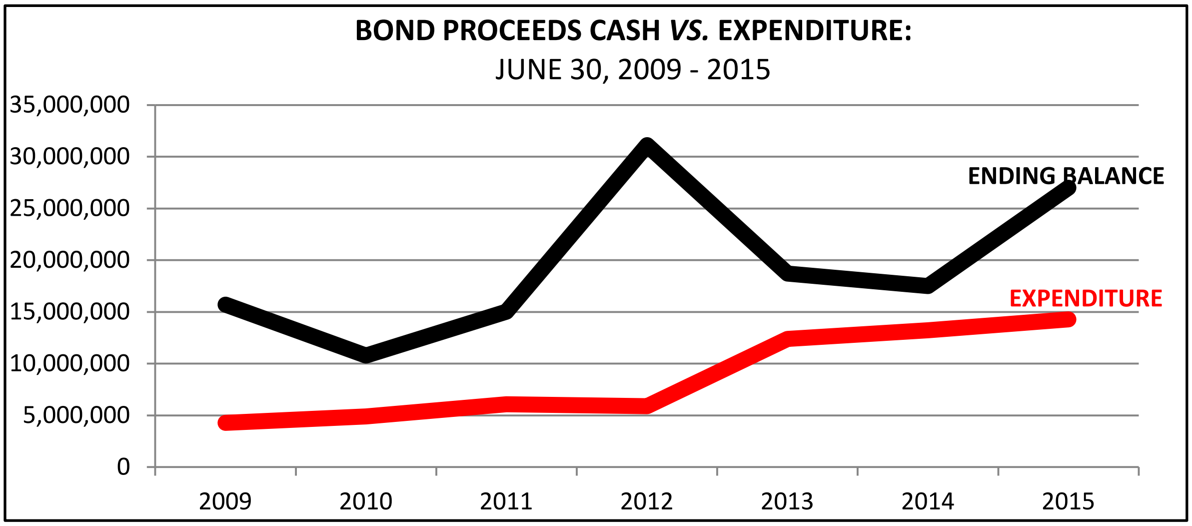


The City has lost almost $9 to 10 million per year of reduced earnings from its deposits as interest rates have declined.

However, the biggest issue is that the City is funding long term projects with more expensive bond money, often long before the project is ready, and the excess long term bond funds must be invested at much lower short term investment rates.

External Bond Funding

Santa Fe typically issues bonds for capital outlays long before the projects are "shovel ready." This usually means that the Finance Department (or New Mexico Finance Authority "NMFA") must invest the funds at a substantial discount to the bond rate for a period of time that typically exceeds the policy to expend proceeds in three years (sometimes for more than five years). Admittedly it can be difficult to predict the expected cash flow as bond projects are being planned, bid, built, and put into service; however, the cost of funding these projects long before they are ready to commence is substantial. Using the bonds issued in the last seven years as represented on the table below, the City of Santa Fe could have saved over $10 million if it had used its own cash to finance the $88 million in debt issued. Of that amount $4 million is attributable to the excess cash proceeds which were not readily disbursed. Future external bond issues should focus on projects that are truly "shovel ready" and have predictable and immediate cash requirements. Additionally the financial and administrative controls over disbursements are critical aspects of long term project management. Better planning for capital expenditures together with improved "matching" on cash expenditures could meaningfully lessen the financing costs imbedded in capital expenditures. (Note: A twenty year bond with a twelve year average life, issued at 4% p.a. coupon, has financing costs approaching 50% of the initial project cost.)



Prepared by City of Santa Fe, Finance Department

Market Conditions

The lending "gaps" in the market seem to be (anecdotally) in the following areas:

a) **Small business lending** – under $500,000. The chart below illustrates that despite an increase in GDP (post recession), there has been a continued decrease in small business lending, most dramatically by the largest banks[3].

b) **Real estate lending**. There continues to be increased regulatory scrutiny regarding loans backed by real estate collateral. This appears to be impacting the credit availability of rental units more than homeownership credit.

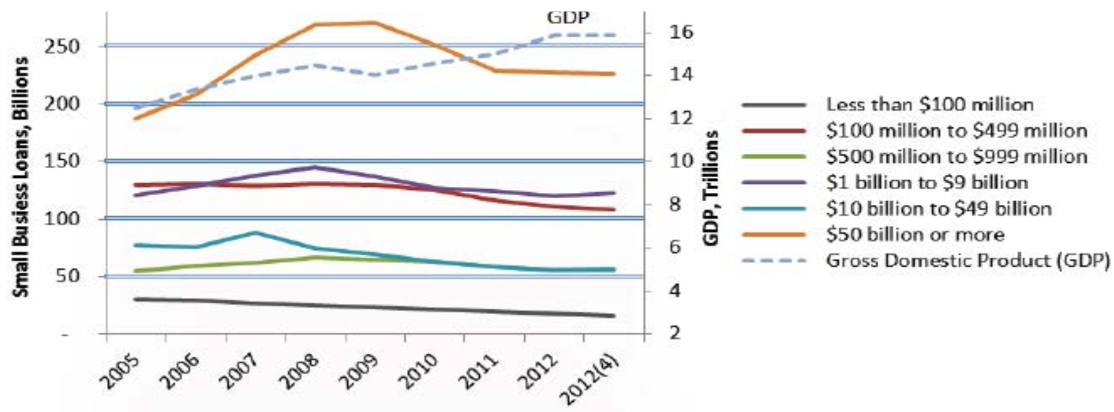
c) **Angel capital** and to a lesser extent Venture Capital (in Santa Fe).

d) **Impact investing**. It is too early to tell what foundations and qualified investors will do in this arena, however, the national and international trend should be beneficial for Santa Fe, which has a disproportionate share of investment advisors and investors who make Santa Fe a part-time or full-time home.

e) **Small consumer loans** do not appear to be a problem in Santa Fe; however, the ubiquitous presence of "pay-day lenders" is of substantial concern.

[3] The lending market *may be* further exacerbated by interstate banking. In an effort to curb taking deposits in one state and lending them in another state, Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) requires non-state domiciled banks to maintain a Loan to Deposit ratio that is 50% or greater than the host state ratio. New Mexico has one of the lowest Loan to Deposit ratios in the US at 66%, and thus compliance would require that only 33% of New Mexico deposits in non-New Mexico banks need to be reinvested in New Mexico to maintain compliance.

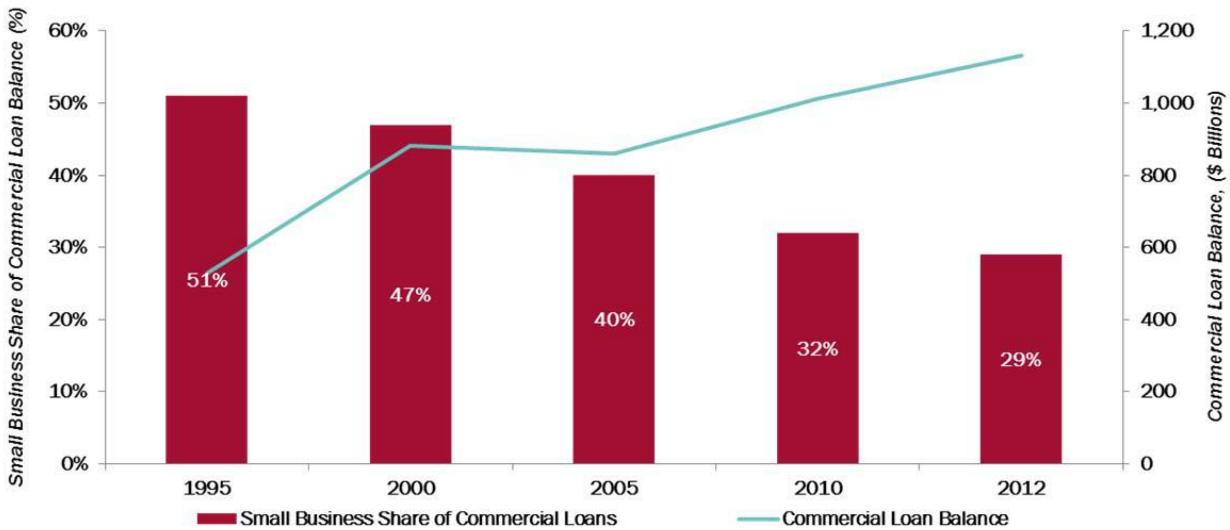
Total Value of Small Business Loans by Depository Institution Size
June 2005 to June 2012



Source: U.S. Small Business Administration, Office of Advocacy, based on Call Reports from the Federal Deposit Insurance Corporation.

Small Business Loans as a Share of Total Loans Are Steadily Declining

Small Business Share of Loans at Banks (%) vs. Total Outstanding Commercial Loans ($ Billions)



Source: Federal Deposit Insurance Corporation, Call Report Data. As of June 2012.

In general, the "market" for smaller business loans is scattered, unorganized, and difficult to serve.[4] The entities perceived to best serve this market are the Community Development Financial Institutions ("CDFIs") and credit unions. CDFIs obtain grants from the Federal government, foundations, and sometimes local governments, and raise debt from the marketplace (including commercial banks). These

[4] An excellent summary of the small business lending market can be found in a 65 page working paper issued by the Harvard Business School, written by Karen Gordon Mills and Brayden McCarthy in 2014. **"The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game,"** (http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf)

non-commercial bank entities have helped target services to lower income and more difficult to serve markets in the region, although they are constrained in part by:

a) lack of long term funding (eg., Homewise, a CDFI focused on residential mortgages),
b) lack of operating (over-head) funding (eg., Accion, a CDFI micro-credit lender),
c) too few qualified loans (e.g., The Loan Fund, a CDFI), and
d) commercial loan limits on credit unions (e.g., Guadalupe Credit Union).

Homewise claims to have the majority of the mortgage market in homes under $350,000 in Santa Fe, a significant achievement and a major source of homeownership capital. Throughout the country these entities have been filling key niche areas of lending that have either been abandoned by commercial lenders or deemed as too difficult to serve (e.g., neighborhood groceries, preschools, charter schools, etc.). In some markets, such as Chicago, the traditional commercial banks and the government are funding CDFIs as an alternative to staffing their own community lending groups. This cooperation has meant that CDFIs have developed significant expertise in specialized community finance. The relationships between government, commercial banks, and CDFIs in northern New Mexico appears to be occurring, but is less robust. Regardless, the CDFIs and Credit Unions exist and potentially can play larger roles. In some ways, CDFIs are a form of public bank in as much as they receive Federal funding (and often local government funding) and they must demonstrate that they are filling an underserved community need.

Focusing more specifically on credit needs locally, a recent 2015 survey conducted by the City of Santa Fe with over 600 businesses (over 90% under $1 million in payroll) further confirmed the concerns regarding access to capital:

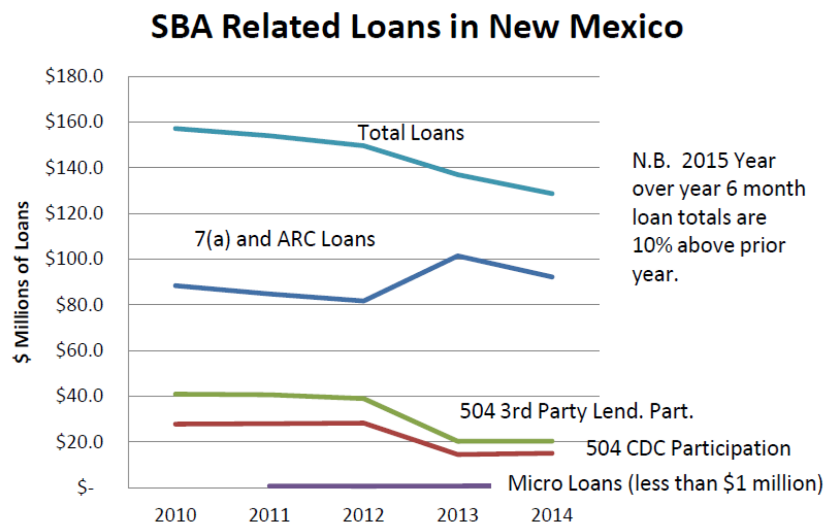
Need for Capital

Access to Capital

	High	Medium	Low	
Strong	2%	5%	23%	30%
Fair	5%	16%	23%	44%
Weak	8%	5%	13%	26%
	14%	26%	59%	100%

As might be expected the businesses with medium to high need for capital are more likely to have fair to weak access to capital. What percentage of these firms are credit-worthy is uncertain; however, national and local indicators would suggest that growth is curtailed by a reduced access to capital.

The Small Business Administration (SBA) has been a key component in developing borrower capacity and in providing guarantees and funding to this more difficult to serve market. Notwithstanding the temporary surge in credit post-recession as a result of the JOBS Act infusion of capital through the SBA, the New Mexico SBA reports the following credit extensions.



Source: SBA regional office in Albuquerque, New Mexico District Lender Rankings and Loan Activity, 2010-2015

Emerging Banking Entities

There is growing interest in peer to peer lending, crowdfunding, and other forms of internet based lending. The Securities and Exchange Commission's Regulation "A+", released March 25, 2015, further clarified and documented the requirements for smaller "public" offerings, as required by the Jobs Act. This feasibility study is not intended to forecast the effects that these regulations will have on the markets, although it is expected to make it easier to publicize and sell securities, as well as broaden the investor market, to include investors who do not qualify under Regulation D as sophisticated investors (high net worth and annual income). These emergent financial vehicles could provide Santa Fe with a more robust financial 'ecosystem', especially if there can be a more visible and transparent understanding of the relatively new markets. [5]

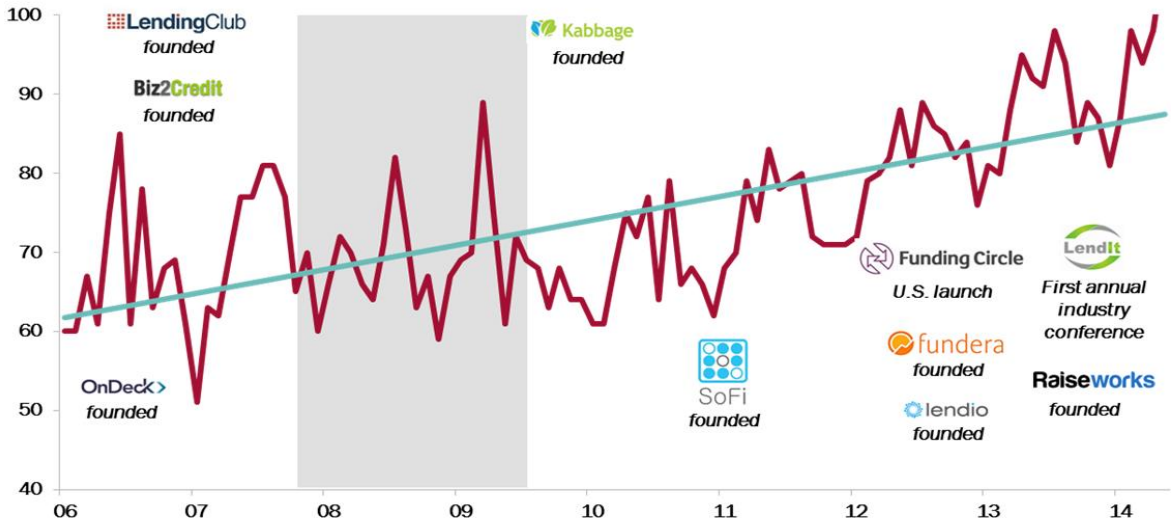
Similar to Amazon, AirBnB, and ZipCar there are robust web-based platforms for consumer credit. Increasingly business credit, particularly for the market under $1 million, is also being targeted. It is too early to tell how these emergent technology based lenders will fare under adverse market conditions. The following two charts illustrate the rapid recent growth of the sector, precisely during the post-recession years.

Online lending and crowdfunding are emerging trends. It is not certain how these new "banks" will mature, however, they are making significant impacts in the home mortgage market and more recently they are competing more effectively in the business loan market. There are also players who are thinly disguised internet reinventions of "payday" lenders.

While it is too early to predict the growth patterns, there is no doubt that the financial world is now being affected. Many old line banks are now looking at how they can use the emerging technology to enhance their competiveness and profitability. At this point, we should "stay tuned" and help our community banking industry stay competitive.

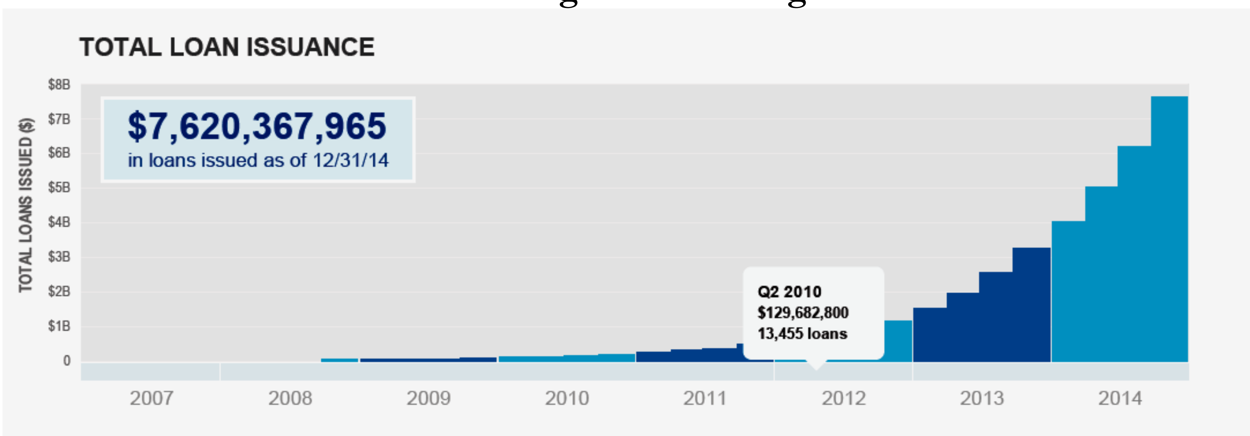
[5] As this document is being finalized the Securities Exchange Commission published on October 30, 2015 more lenient and permissive rules for crowdfunding under $1 million, thereby responding to earlier criticism that the previously published regulations did not adequately address the new technology available for funding smaller loans and equity investments. It is too early to know how these new regulations will affect State regulations or the markets.

Average Monthly Google Searches of "Term Loan"

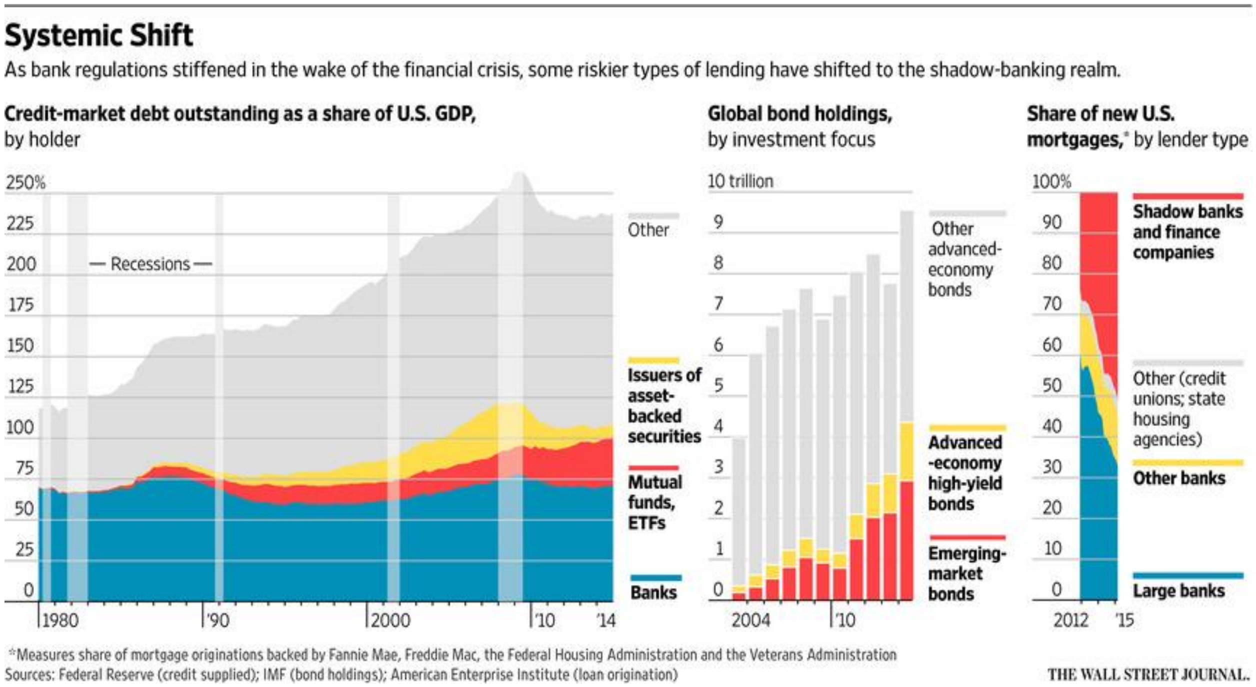


Source: Google.com/trends. As of May 2014.

Lending Club Lending



Note: This chart shows loans "issued," not loans outstanding. Less than $50 million was lent in New Mexico since inception, presumably because Lending Club did not find it efficient to register in New Mexico (secondary market trading is permitted). Lending Club went public in December 2014, which now opens their market for investors to all 50 states, including New Mexico, although as of June 2015, Lending Club was still not accepting investors from New Mexico. Some analysts note that a substantial growth came from traditional banks buying loans, rather than from Peer-to-Peer growth.



While Lending Club is one of the largest players in this market, there are many others with both competing models (including payday lenders), and different modalities. The modalities can basically be divided into on-line lenders, brokers (Marketplace), and peer lenders (P2P). See the chart below. Some traditional lenders are finding it attractive to bridge their clients into this market, yielding a better return for themselves (fee) and minimizing the credit and regulatory risk to themselves. The efficiencies (and lack of regulations) seem to be compelling enough for some traditional lenders to attempt to maintain the client relationship, while introducing their customers to loan products through the internet lenders.

The introduction of internet lending can be compared to the hospitality industry. The direct lenders are akin to Holiday Inn on the Web. The brokers are like Kayak or Orbitz and the Peer to Peer lenders are similar to AirBnB.

Three Emerging Models in Online Lending to Small Businesses

	Online Balance Sheet	Marketplaces	P2P Platforms
	OnDeck Kabbage	fundera Biz2Credit	LendingClub Funding Circle
Model	Use balance sheet capital to decision loans via new risk scoring algorithms that include non-trad'l data	Connect borrowers with range of traditional and alternative lenders, incl. big banks, SBA, new players	Connect prime and super-prime quality borrowers with capital from consumers, inst'l investors
Loans to Date	Est. $1.5B as of 4Q13	N/A	Est. $4.7B as of 4Q13
APR	20 – 50 percent	Wide variation given range of products and lenders	9 – 12 percent
Terms	6 – 12 months on average; focused on new loans	Wide variation given range of products and lenders	3 year or 5 year; largely focused on refinancing of credit card debt
VCs	Google Ventures, First Round, Tiger, SAP Capital	Khosla Ventures, First Round Capital, Square 1	Khosla Ventures, Kleiner Perkins, General Atlantic

Source: Harvard Business School Working Paper, 2014

Of particular concern both nationally and at the state level is how these emerging financing vehicles should be regulated. They generally fall "between the cracks" of the FDIC, SEC, and Consumer Finance Protection Bureau regulations. Efforts to regulate also are tempered by the fact that many of these vehicles are serving the very gaps left open by the retreat in commercial bank lending subsequent to the 2008 financial crisis. Regulation (or market place opinions) will, or should, address the following areas:

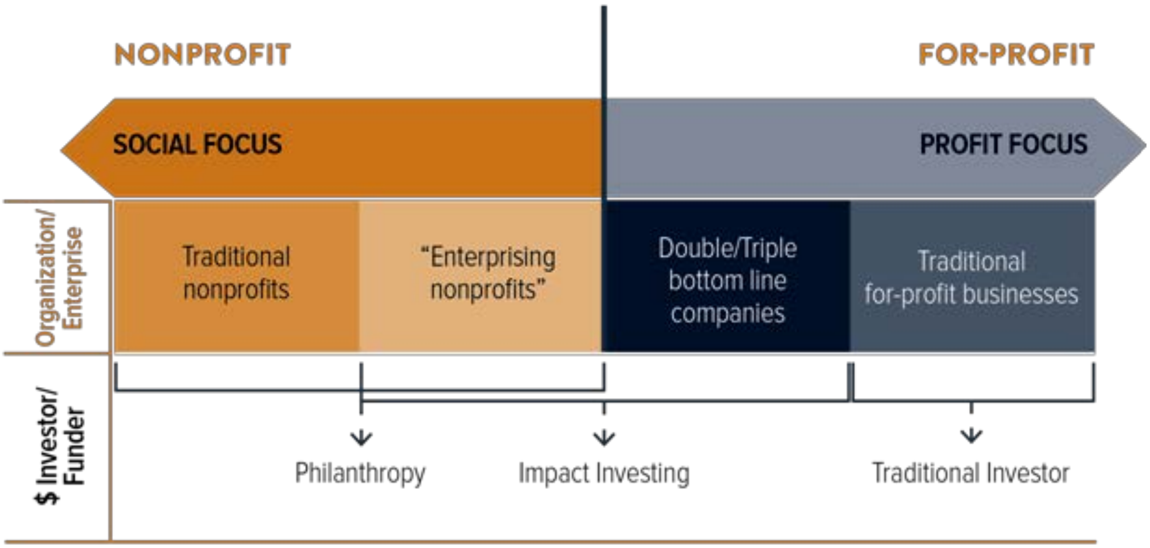
a) Transparency and disclosure
b) Oversight and monitoring
c) Borrower education and literacy

Twenty states, including Oregon, Colorado, and Arizona, have or are in the process of developing permissive "crowd-funding" platforms for intrastate transactions between borrow and lender. By restricting activity within state boundaries, these states are able to establish in-state platforms, thereby gaining an advantage over states that wait for Federal regulation. The in-state regulations are designed to allow smaller individual investments by investors, who may know local conditions, but who are not exempted by Regulation D as an accredited investor (e.g., $1 million net worth and $200,000 annual income). Most of these regulations appear to be more permissive than Federal regulations, albeit for smaller limits. Local markets may become important alternatives, especially for smaller transactions. New Mexico has developed new regulations which are expected to be published by the end of 2015.

It is worth noting that the online and marketplace lending is gaining increasing traction and does not need to wait for 'crowdfunding' legislation. This is lending that is using the internet, robust credit scoring systems, and social media to find investments and evaluate them. An Albuquerque firm, Main Street Crowd, https://www.mainstreetcrowd.com/content/about_us/ , for example, is currently installing such a system in Miami, Dade County, under the auspices of the National Development Council (NDC). Another interesting use of such a platform was launched by the Michigan Economic Development Corp. They funded 33 out of 34 projects for "public spaces", accepting donations, often with matching funding from a public entity, thereby funding smaller capital projects that had high community appeal, but lacked adequate government funding. Donated funding is not governed by the SEC. See Appendix C for a full article.

Impact Investing

Another sector that has gained cache, particularly in recent years, is impact investing, the concept of meeting more than just a financial bottom line. Terms such as Triple Bottom line, B corps, and mission related investing, all point to the concept that the very simple tax distinction between Non-profit and For Profit is blurred. There are many philanthropic ventures looking for more sustainable, financeable business models, and increasingly shareholder driven companies are recognizing the value of having robust social goals.



Foundations can use their corpus (investment funds) to make mission or program related investments, rather than just making grants. The Santa Fe Community Foundation and SVH Support (related to Christus St. Vincent Hospital) are collaborating as they begin making loans to non-profits and/or for-profits with tangible social missions. Impact Network Santa Fe (IN Santa Fe) has convened both investors and potential entrepreneurs to encourage the growth of this type of investing in the local economy. Kellogg Foundation, a long time impact investor, is providing support as well. Demographic research is identifying larger numbers of women and millennials in the investor markets as key drivers of this trend. Increasingly fund managers are documenting that returns on "sustainable" investing, another subset of the impact investing market, appear to be achieving equal or better returns than traditional portfolio investing.

IN Santa Fe has identified and engaged in conversations with several of the emerging impact investors who are using web portals to post opportunities (investees/borrowers) and to allow investor/members to seek, review, and ultimately fund opportunities – both locally and globally. This approach could help bridge the investor market in Santa Fe with the emerging Peer to Peer and MarketPlace lending platforms and illustrates another way in which the internet is providing access to capital in new ways.

The Strawman – A Feasible Approach to Public Banking

The "Strawman" is a basic hypothesis of what a public bank could be in Santa Fe. This technique is used in order to analyze the feasibility. To the extent possible the Consultants have attempted to design a "strawman" that indeed is feasible; an approach that addresses community and staff concerns. Notwithstanding this hypothesis (or "strawman"), the Public Banking Feasibility Study was not intended as either an implementation plan or a legal review. The Strawman contains two *parallel* tracks, i) a city banking function, and ii) a crowd-funding platform(s), although they are related given the potentially significant impact that public deposits have in the regional financing network. In designing the Strawman approach, economic feasibility, has been complemented with consideration of fiscal, operational, legal, administrative, and political feasibility, all of which impact the willingness and ability of the City to change present operations.

City Banking Function: Create an entity called the Santa Fe Bank ("SFB") to receive and manage all public sector deposits, initially just the City's cash. Use the SFB to fund City projects, especially prior to the issuance of larger, more fee efficient bond financings. Once created, the charter of the SFB will detail the scope, board oversight, jurisdiction and basic policy.

Possible Phasing of the Banking Function:

Phase I: Create a separate City entity which assumes the basic cash management functions of the City, including lending on approved City capital expenditures. This separate entity does not require a banking charter. The entity will establish policy and procedures for lending which will create a more transparent and "arms length" financial relationship, thereby providing the economic and financial incentives within the City for improved cash management, particularly for Capital Improvement Plan (CIP) transactions, both disbursements and funding.

Fund Balance "Clean-Up": Current "fund balances" should be reviewed based upon stringent financial policies: i) transferred to the General Fund and re-appropriated annually through the budgeting process, ii) established as a "loan" from an internal bank (with terms for repayment), or iii) left in the originating "fund" for the explicit purposes of a grant, legal requirement, or bond covenants.

Appropriate Liquidity Policy: One of the major financial opportunities that Phase I offers is the 'right sizing' of the City's liquidity. This can be done by paying down callable bonds with cash that is being invested in low yielding short term bank accounts. Extra and significantly less expensive liquidity also can be achieved through lines of credit or collateral resale agreements with the City's depositories. This allows the City to temporarily return collateral in exchange for short term cash investment mismatches (e.g., a certificate of deposit matures in 6 months, but there is a one week period before it matures when extra cash is needed, e.g., before taxes are received). It is an excellent mechanism to smooth cash flows when there are unexpected early cash disbursements or late revenue receipts. The SFB can provide the confidence to develop such a Liquidity Policy.

During Phase I changes in the city's depository collateral policy will be investigated with the primary objective of incenting local banks to increase lending in the region, particularly lending which will enhance access to credit by smaller businesses and consumers. Current low loan to deposit ratios may inhibit rapid uptake, but this approach may also make it easier for local banks to accept deposits from the City, and hopefully will improve deposit rates. Bank lending to CDFIs in particular could enhance the reach of the CDFIs to participate in the smaller business, consumer, and mortgage markets.

Possible Collateral Reduction Plan: On up to 50% of the City's investments with depository banks, allow for a reduction in collateral of up to 50% in exchange for collateral consisting of loans to CDFIs and Credit Unions for lending in the region. This program can be integrated with robust internet linkages between and among lenders and investors, thereby helping to simplify access to credit sources, especially for smaller borrowers.

Phase II: Apply for a State banking charter which allows all of the functions provided in Phase I. In addition the charter will seek permission to accept deposits from other public entities and charitable organizations. The new bank can pursue either a conventional equity model or a mutual bank model depending upon ongoing investigation with State regulators and legal counsel. The new bank will broaden its lending mandate to include the other public entities which choose to participate (e.g., County, public schools).

Note: It is possible that a bank charter can be pursued in parallel with Phase I. The charter will take time to draft, vet, and process. In the meantime, the City will gain important expertise and develop policies which will enhance its ability to transition to a separately chartered institution.

Phase III: Broaden the lending function to include *public interest loans* underwritten by community banks in the region. Non-public sector lending will require a minimum participation by the private sector banks of 50% and should not trigger any "anti-donation" laws; however, if legally advisable, the LEDA plan should be amended to specifically include the external activities of the bank.

Governance Considerations for Phases I, II, III

Cross-departmental funding currently exists at the City, through "fund accounting," severely reducing the ability of the Finance Department to forecast cash flow requirements, and costing the City in excess borrowing. By formalizing policy and procedures, as well as updating liquidity mechanisms available for cash management, not only can the City enhance its bottom line, but also it can significantly increase transparency. Incentives for good departmental cash management will allow the City to fund internally much of its capital needs in the foreseeable future, thereby further enhancing net interest costs and flexibility. The City should take this opportunity to establish an Advisory "Blue Ribbon" Commission composed of citizens with ample financial experience to advise the Finance Director and Finance Committee as policies and procedures are developed. This committee also might serve as the advisory group for reviewing a bank charter application.

Any bank charter application will require a substantial and complete description of the governance mechanisms of a new bank. At a minimum, a Board will need to be described (and later appointed) which insulates the Bank from election cycles. A possible approach might be the following:

City Only Deposits (7 member board)	City, County, and School District Deposits (9 to 13 member board depending on participation)
Council Member	Council Member
3 Independent Financial Experts	County Commissioner
2 Citizens at large	School District Board Member
Finance Director of the City	3 Independent Financial Experts
	2 Citizens at large
	Finance Directors of participating public entities

The Board's most important function is that of selecting a CEO to run the bank. It is also relatively common for the Board to have one or more subcommittees that focus on operational policy, such as a loans, audits, and investments.

Operational Considerations for Phases I, II, III

Loan requests from the City should include the following details:

- Detailed Proposed Use
- Amount
- Term Requested
- Source of repayment and/or pledged revenues (including operating revenues and expenses)
- Forecast of recalculated City liquidity and leverage ratios after the loans is made
- Necessary approvals for loan and dedication of repayment source

Note: The SFB should require standards that are just as rigorous as public bond underwriting in order to make sure that the credit rating and long term access to capital is maintained.

Cash management responsibilities should include:

- Operating under guidelines which conform to State regulation for municipal entities, but which may be stricter, as directed by the depositors, e.g., the City. Encourage and monitor depository lending goals which enhance community economics.
- Insuring liquidity for the City's operating and debt repayment needs.
- Obtaining and/or providing temporary liquidity for short term cash management, in order to optimize an investment ladder which is appropriate for the City's needs.

Loan requests from a non-City Entity to the SFB must include:

- From a public entity (e.g., County or School District): Deposits with the SFB which are no less than 150% of the loan request, and meet the other deliverables for a loan request.
- From a private financing institution: In addition to the information required above in City infrastructure loans, (i) a commitment to fund the loan for no less than 50% of the principal required, and (ii) a clear description of the expected public benefits of the transaction.

Examples of Potential Loans*

Intra-City and Public Lending (Phase I and II)	Community Lending (Phase III)
Green Energy Infrastructure for City with Payback (ie., Water Recharge or "Purple Pipe")	Co-lending program with CDFIs
Construction and/or long term funding for CIP	Affordable housing construction financing
Investment in public transit which matches private investment in car and bike sharing.	Social Impact Bond underwriting for pre-school education

*Any interest reduction program is expected to come from a budgetary allocation to SFB.

City Policy Issues:

- Change in collateral policy.
- Deferring external bonding.
- Delineation of policy, staffing, and oversight for separate lending and cash management function. Eventually, these policies and procedures would be included in a written charter for the SFB.
- Radical realignment of the use of 'funds' in order to enhance liquidity and transparency. Through use of a consolidated treasury management function, the SFB should be able to lengthen the Weighted Average Maturity of its portfolio in coordination with the City, specifically through improved forecasting of cash flow requirements in operations and for CIP.
- Amendment of LEDA possibly required for direct lending.

Financial/Economic Impacts:

- Funding CIP internally allows the City to improve its earnings on deposits by using them to fund the planning and construction phase of projects, thereby reducing or eliminating the negative interest rate between borrowing rates and investment rates.
- Determine if banks would provide higher interest rates and lend more if deposits required less (or less costly) collateral.
- Evaluate potential and cost for a liquidity 'back stop' from NMFA or banks.
- Reduce bond financing costs (legal and financial) by minimizing external bond issuance.

Local Crowd-Funding/Peer to Peer Lending Hub: Provide support and convene the local market participants (banks, CDFIs, credit unions, foundations, Mix, Startup SF, INSF, SBA, RDA, et al) in order to "jump start" a New Mexico intra-state lending portal for Santa Fe.

> Note: While crowd-funding is not directly related to the public banking initiative, the economic power associated with the new funding source is too important to overlook. It has the potential to bridge the traditional angel and venture capital market and the commercial bank market with local investors who have a vested interest in the local economy. The "sharing economy" is now impacting the financial markets and creating new ways to fund enterprises – particularly new, innovative ideas that catch the imagination of the public. Santa Fe is a creative economy….a tech savvy economy…and has a strong investor class. Encouraging local crowd-funding portals and support systems to grow, may address the core public banking objectives, faster, cheaper, and less politically laden than almost anything else the City can do on its own. In some ways it is introducing the most democratic of all funding vehicles. Additionally, commercial banks are increasingly looking at online vehicles, including crowdfunding, to lower their origination costs, thereby potentially making Santa Fe's own banking sector more competitive.

While the City does not need to be directly involved, in fact its deposits with local banks can help provide liquidity to the market. If commercial bank depositories use part of their City deposits to invest in CDFIs and Credit Unions, the financial entities that tend to fund smaller loans, the City can help stimulate access to credit indirectly without assuming a direct participation in loans of commercial banks. Additionally the following steps could be taken by the City to encourage a speedier development of the infrastructure necessary to take advantage of the new State regulations permitting crowd-funding within the State.

Steps

(Not necessarily in time sequence order)

Step 1: Identify staff responsibility (perhaps co-sponsorship with the County) and convene start-up support groups, CDFIs, Banks, and other interested parties in order to review and comment on the new State regulations.

Step 2: Run an RFP for an existing platform(s) which can be readily used to launch a Santa Fe portal for both social capital/impact investing, as well as market rate based funding. Consider funding start up costs, if necessary.

Step 3: Provide links through various economic development services.

Step 4: Launch one or more City projects through the site in order to encourage usage. Consider incentives (e.g., interest rate write-downs) for projects which have direct public interest. See Appendix C which describes the Michigan Economic Development usage of crowd sourced funding to underwrite public works projects throughout the state.

Step 5: Monitor (and publicize) usage…again and again and again. Track estimated economic impact and celebrate it. Metrics for the initiative could include absolute growth in funding, tracking start-up businesses, and surveys.

Examples of Crowdfunding Investments (City MAY or MAY NOT participate in these)

Social Capital and/or Non-Profit Investments	Market Rate and/or For Profit Investments
Reward/product premium deals	Start Up and/or Venture Capital for a new business
Social campaigns (e.g., funding a recycling program)	City Social Impact Bond or a Neighborhood Improvement Project
City Park Improvement Plan	Participating loan among financial institutions
Membership campaigns	Capital for business expansion

City Policy Issues:

- Role in encouraging the development of a "portal" or a Hub.
- Approval of LEDA status for any direct lending by the City through the portal.
- Establishing any priorities for incentives which might be used to encourage community support of key city initiatives (e.g., affordable housing, startups, etc.)

Financial/Economic Impacts:

- Increased access to loans/capital.
- Growth of the entrepreneurial environment.
- Potential to increase competition and/or disrupt lender markets.

Risks and Mitigants

Public Banking Initiative

Risks	Mitigants	Follow-up Work
Governance of a banking function and risk-taking involved in making loans are inherently subject to attempts to influence decisions based upon political concerns rather than strict financial and economic considerations.	In Phase I a separate management advisory committee can be established to parallel the function of an independent board of directors. If and when a bank is chartered, a separate and independent board will be required. Note: Political concerns can affect the current treasury function of the City. The Phase I focus on cleaning up the 411 funds used by the City will significantly increase transparency and proper over-sight of City spending.	Designate specific treasury functions which will be managed by the internal "bank." Provide the organizational support to make the changes. Appoint qualified oversight for the function which has a separate reporting function.
Self-funding Capital Improvement Projects ("CIP") reduces the "discipline" of the market in determining the borrowing capacity of the City.	Each loan request should provide to the City "bank" all of the same financial information required by the external markets, including dedicated source of repayment and ongoing costs (and revenues) from the project. Bond advisors and counsel will continue to advise the City on its financial condition and rating predictions. The City will continue to access the external bond markets (even for the projects which have been initially funded internally), as and when long term liquidity is sought.	Implement a comprehensive CIP 5-year plan with annual updates.

Risks	Mitigants	Follow-up Work
Failing to fund CIP projects with long term bond funding when interest rates are low (as they currently are) risks increases in rates in future external funding.	Current practices result in a negative "carry" of at least 10% to 15% of the CIP capital amount during the first 5 to 7 years of the project. 20 year interest rates would have to increase considerably (and quickly) for this present value discount to be erased. Currently the City is investing its cash at a Weighted Average Maturity of less than one year. With internal financing, the City effectively will be lengthening its deposits (loans) to a longer term, higher interest rate, offset equally by the same term by the internal City "borrower." This should offset concerns over any perceived mark to market requirements.	Complement existing financial policies with a more "neutral" policy relative to interest rate risk.
Internally funding long term CIP will decrease liquidity of the City.	Alternative methods of maintaining liquidity are less expensive, specifically either lines of credit with local banks, and/or collateral repurchase agreements.	Create a policy which governs these liquidity enhancement techniques.
Lowering collateral requirements in order to incentivize local banks to lend more will subject the City to increased risk of bank failure.	Federal agency risk would in no event fall below the State minimum of 50% of the deposits. If additional collateral is reduced, it might be substituted (rather than reduced) by local performing loans in the portfolio, perhaps by more than 100%.	Solicit input from depository banks for their suggestions of ways to increase local lending in their portfolios and improve their appetite and/or interest rates for receiving City deposits.
A banking function will add to the administrative costs of the City.	Most of the Treasury function currently performed could be "transferred" into the new entity. The gradual phased implementation permits the City staff the opportunity to grow into the full banking functions without unduly relying on external consulting and staffing. In Phase II and beyond additional overhead will be required in order to maintain bank reporting and compliance tests. It is projected that the incremental cost would be less than 1%. This cost is far less than the current spread between depository and bond rates, which exceeds 3%.	Seek an exemption (or substantial reduction) from FDIC insurance for public to public deposits. This will save approximately 10 basis points p.a. Other regulatory burdens may also be eased due to the relatively simple construct of the bank, especially if the deposits and loans are solely in and among Santa Fe public entities.

Risks	Mitigants	Follow-up Work
Existing commercial banks and CDFIs will view any City banking as a competitive threat, thereby jeopardizing a state charter and a cooperative relationship.	Focus initially exclusively on intra-city lending. Look for ways to alter the collateral requirements on deposits with the banks to enhance their ability to lend locally. Require any external City funding to be initiated at the request of the commercial bank and require at least 50% underwriting by the private banking sector.	Establish a policy which encourages private sector lending, rather than public sector lending, unless or until the banks find it advantageous or necessary to access additional liquidity from the City.
The City has an inadequate source of unrestricted cash from which it can source equity for a bank.	An internal "banking" function which is not state chartered does not require separate equity. Upon chartering a bank adequate equity will have to be provided. The public entities providing the equity can (should) receive a higher yield on those funds. Alternative sources of equity can also be considered, such as: Charitable fund (PRIs) Bond issue from public entity Mini-bond funded by citizens	A thorough implementation plan and offering memorandum would be necessary for any external financing and would parallel the preparation of necessary application materials for a state banking charter.

Crowdfunding Initiative

Risks	Mitigants	Comments
City involvement could 'telegraph' that the City in one way or another is guaranteeing the investments which are being 'crowd-funded.'	Review investment materials and insure that disclosures are adequate, and do not imply City credit support. If the City is crowd-funding a project directly, the source of repayment and whether or not the City is adding its "full faith and credit" must be carefully explained.	
Role of City is not clear.	Determine an explicit role for the City. Engage professional management, if necessary, to define and legally articulate roles and responsibilities.	Marshall Neel of Mainstreet Crowd may be a resource. Community Sourced Capital (Portland) expressed interest to INSF of having a private label/SF site.

Feasibility – An Overview

The Public Banking approach under The Strawman section of this report outlines an approach which the consultants consider feasible. In order to quantify the fiscal and economic impacts, a pro forma was developed which forecasts the possible volume of deposits and loans made through a Santa Fe bank and the related treasury improvements. In summary, increased investment either in equity or debt in the Santa Fe area (regardless of its source) has a stimulative effect on the economy, as long as it is not a direct offset (reduction) to another source of investment – a substitute. In order to conservatively project the economic impacts of each source of funds, a "haircut," or reduction, was made to the estimate of what might be expected as a total investment in the forecast.

In addition to the analysis of the *economic* impact, we have provided an estimate of what might be the fiscal enhancement of the City budget. This impact is generated through a more efficient deployment of City deposits, using more of the City liquidity to 'self-fund' CIP investments. The immediate effect is that of eliminating the costly difference between long term bond rates and short term investment rates under most interest rate scenarios (whether interest rates are high or low). Self-funding also provides the City with the ability to reduce bond fees associated with almost yearly debt issuance.

While the consultants have focused in this section on the economic and fiscal impact of the public banking initiative, the development of The Strawman approach specifically took political, community, and legal considerations into account in the design.

Public Bank Strawman – Overview of Feasibility

Feasibility	High Medium Low	Issues	Potential Mitigation
Political	**Low**	While the political will of the Council appears to be there, approval for a State Chartered bank will require approval by the Financial Institutions Division of the State. There is no precedent for the approval of a bank such as this. IF no banks oppose the application (maybe even support it), this could be easier.	There is no reason that the City cannot commence operations without a bank charter. This would allow the City the time and resources to "prove" that the mechanism is well-managed and operationally robust. Commercial bank and CDFI support from Santa Fe banks (and the Chamber of Commerce) would be useful.

Community Support	**Medium**	There is a wide range of opinions regarding the advisability of a public bank for the City, however, most community members (institutional and individual) are willing to concede that it would be useful for the City to use its cash deposits actively to fund at least the design and construction phase of infrastructure projects.	Independently appointed and qualified Board and Staff are critical to maintaining the support of community members.
Legal	**High**	No explicit legal obstacles have been flagged, although this study did not include a full legal review. The primary concern has been the potential for anti-donation laws to be used as an objection. N.B. One source has assured the Consultant that the Federal Reserve Board will not allow a public bank to be a member of the Fed. This would not block the City from creating a bank.	If the Bank is funding intra-city or public needs/infrastructure, there should be no objection. Upon commencing an activity which contemplates participating in a bank loan to a private entity (even if it has a demonstrable public interest), an abundance of caution would suggest that a modification of the LEDA plan would be appropriate. Certain activities, such as affordable housing financing, are already exemptions to anti-donation laws.
Financial	**High**	See pro formas below.	
Economic	**Medium**	Introducing new lending vehicles only stimulate the economy if they result in net NEW investment in the community. If they are substitutions for existing public or private investment, they generate no new economic impacts.	Most of the value of funding infrastructure internally is "financial" in nature. The primary Economic value of the SFB is in its potential to stimulate NEW lending through one of the following methods: ➢ Reduction in Collateral to Banks ➢ Encouragement of Crowdfunding ➢ Direct loans/spending from the City

Economic Impact Analysis – Arrowhead Study

Introduction

This chapter summarizes an economic impact study done by Arrowhead Center at New Mexico State University. In particular, Arrowhead Center was asked to determine the impact of the proposal put forward by Building Solutions LLC. The methodology measures the total impact on a local economy by taking into account both direct and indirect effects of changes in expenditure. The author of this chapter is Dr. Christopher A. Erickson. His CV is in Appendix A.

In preparing this report, estimates and projections provided to Arrowhead Center by Building Solutions, LLC were relied on. Arrowhead did not make an independent evaluation of these estimates and projections. The full report prepared by Arrowhead Center is available from the City, or can be obtained by emailing Chris Erickson at chrerick@nmsu.edu.

Building Solutions, LLC has proposed three alternatives for consideration by the City. These are 1) reducing reserve requirements to allow increased funding of CDFIs and Credit Unions, 2) the creation of the Santa Fe Bank (SFB), and 3) the creation of a crowd sourcing hub to facilitate lending. The economic impact of each of these proposals is evaluated.

Multipliers for the County of Santa Fe were obtained from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA). The BEA has developed U.S. multipliers based on an input-output table reflecting the structure of 500 U.S. industries. This information, in conjunction with local wage and salary data, has allowed the BEA to estimate multipliers for smaller economic units such as states and counties. The multiplier used for lending is that for the industry classification of "Federal Reserve banks, credit intermediation and related services." In addition to an output multiplier, earnings, employment, and value added multipliers are also provided by the BEA. The multipliers are:

Output multiplier	1.7234
Earnings multiplier	0.3226
Employment multiplier	9.9062
Value added multiplier	0.9634

The output multipliers indicate that for every one dollar of new lending, gross receipts in Santa Fe County will increase by $1.7234. The earnings multiplier indicates that 32.26-cents of each dollar of new spending becomes household earnings.[6] The employment multiplier indicates that, for every one million 2010 dollars of new spending, 9.9062 jobs are created.[7] And finally, for every one dollar of additional spending, value added increases by $0.96340.[8]

A problem is that the BEA multipliers are by county and are not available for individual cities, but the goal of this study is to determine the impact of "public banking" on the economy of the City of Santa Fe. Unfortunately, there is no simple way to allocate economic impact between the rest-of-the-county and the City. The approach we take is to allocate economic activity to City using gross receipts data. Based on the four quarters ending June 30, 2014, 83.0% of total County gross receipts are generated inside the Santa Fe

[6] "Earnings" includes compensation paid to workers and profits received by business owners.

[7] Because employment is a real number, revenue must be converted to the multiplier base year price, which is 2010. The adjustment factor for converting 2015 dollars to 2010 dollars is 0.91.

[8] Value added is defined to be gross receipts less the cost of intermediate goods. It represents the change in GDP attributed to an increase in economic activity.

city limits.[9] Thus, assuming that the initial loan is for a project in Santa Fe, then the output multiplier becomes 1 + 0.7234*0.830 = 1.6004, which works out to 92.8% of the countywide multiplier. The other multipliers are therefore adjusted by 0.928. The City level multipliers are:

Output multiplier	1.6004
Earnings multiplier	0.2678
Value added multiplier	0.7996
Employment multiplier	8.2221

While the technique we use to derive the city level multipliers is reasonable, it is important to keep in mind that it is an approximation. All that we can say for certain is that the City level multipliers are less than the County level multiplier.

The problem with using public banks for lending

For lending to have an economic impact, it must be new lending that would not have occurred had not the collateral reduction program been put in place. Federal Reserve action since the 2008 financial crisis have substantially altered the banking system. The Fed has begun to pay interest on reserves so that the cost of holding excess reserves has fallen substantially, while at the same time, the Fed engaged in a series of asset purchasing programs collectively referred to a Quantitative Easing. Consequently, excessive reserves have expanded by orders of magnitude. For example, for the week ending December 26, 2008, prior to Quantitative Easing, banks collectively held $2.4 billion in excess reserves; for the week ending September 16, 2015, excess reserves were $2.6 trillion, more than 1000 times greater than before the start of Quantitative Easing. The U.S. economy is simply awash in liquidity.

Turning to "public banking," to the extent that a "public bank" funds projects that are socially desirable, but otherwise would not have been funded, the "public bank" has an economic impact. A problem arises from the fact that profitable projects, given the level of excess reserves, are already being funded by traditional for profit banks. Indeed, there is a shortage of such projects relative to the available funds so that competition for such lending opportunities is relatively intense. This does not mean there is no role for a public bank as there are projects that have positive social value yet are unprofitable using traditional accounting standards. These projects are undesirable from the point of view of a traditional lender, but still are desirable from a social perspective. The problem is that lending for these projects will generate a negative cash flow, thus, require a subsidy if the bank making the loans is to remain viable. These subsidies could take a number of different forms including direct financing by government (e.g., road construction), loan guarantees (e.g., U.S. Import-Export Bank), tax breaks (e.g., residential mortgages), or concessionary interest rates (e.g., direct federal student "Stafford" loans). To the extent that a "public bank" enables socially desirable but unprofitable projects, either through guarantees or loans, the "public bank" contributes to economic activity. But because the pubic bank is funding projects that private banks aren't interested in funding, the "public bank" will earn a below market return or might even experience a loss. Indeed, to the extent that the "public bank" is earning a normal profit, then it is funding projects that could have been undertaken by the private sector, hence, contributing nothing to net economic activity. Thus, a "public bank" will require some sort of subsidy if it is to contribute to economic activity.

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[9] An alternative would be to allocate based on population. The population of the City according the 2014 U.S. Census estimate is 70,297 while that of the County is 148,164, which means that City accounts for 47.4% of the total County population. However, this estimate understates the likely true impact of projects on the City of Santa Fe as people living in outlying areas shop in Santa Fe, so income initially generated in the rural Santa Fe County will disproportionately find its way into the City economy.

Funding Community Development Financial Institutions and Credit Unions

Building Solutions is proposing three changes to City of Santa Fe for improving fiscal management, thereby, freeing funds for lending via a public bank or otherwise. The first proposed change is to reduce or substitute required collateral on deposits, and having the funds released be loaned to Community Development Financial Institutions (CDFIs) for use in community development projects.

The Building Solutions proposal is to reduce the required collateral from 102% to the extent that the depositories agree to provide additional loans to CDFIs operating in Santa Fe. This approach has the advantage that it channels funds to entities that are funding socially desirable projects. A CDFI, for example, can combine grants with loans to fund a socially desirable project, such as low income housing, that would not qualify for a traditional private sector loans. Table 1 reports economic impact of the proposed Collateral Reduction Program. The program is assumed to begin in 2017 with banks lending $5 million to CDFIs for the first six years, increasing to $10 million thereafter. Loans are assumed to be repaid one-third each year, with repayments becoming available to finance new loans. We estimate that the program would in its seventh year generate $49 million in gross receipts, support 232 jobs, and produce an additional $1 million in gross receipts revenue annually. Moreover, the funding provided to CDFIs will have been used to finance loans to underserved groups. In fact, there is considerable precedent for cooperation between commercial banks and CDFIs. It is routine, for example, for commercial banks to refer potential borrowers who do not qualify for traditional loans to an alternative financial institution.

Table 1: Economic Impact of from Lending Financed by Reduced Collateral Requirements ($000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Newly Available Funds	$5,000	$5,000	$5,000	$10,000	$10,000	$10,000	$10,000
Loans Repaid and Available for Relending	NA	$1,667	$3,889	$6,852	$10,802	$15,514	$21,056
Total Loans Financed by Collateral Reduction Program	$5,000	$6,667	$8,889	$16,852	$20,802	$25,514	$31,056
Economic Impact							
Gross Receipts (New Lending x 1.6004)	$8,002	$10,669	$14,226	$26,970	$33,292	$40,833	$49,702
Household Earnings (New Lending x 0.2678)	$1,339	$1,785	$2,380	$4,513	$5,571	$6,833	$8,317
Employment (New Lending x .91 x 8.2221/1,000,000)	37	50	67	126	156	191	232
Value Added (New Lending x 0.7996)	$3,998	$5,331	$7,108	$13,475	$16,634	$20,401	$24,833
Gross Receipts Tax (@ 3.1875 % of Gross Receipts)	$159	$213	$283	$537	$663	$813	$990

Source: Building Solutions, LLC, and Author's calculation.

Creation of the Santa Fe Bank

Another proposal put forward by Building Solutions is the creation of an entity to better manage City internal cash reserves. For purposes of the report this entity is being called the Santa Fe Bank (SFB). As proposed, the SFB would be implemented in three phases with Phase I being the creation of a separate City entity that assumes basic cash management activities. This phase would not require a bank charter. Phase II involves applying for a state banking charter so that the bank can accept deposits from other public entities and charitable organizations, and so that the various entities can "self-fund" public debt needs more efficiently. Phase III would broaden the lending function to include public interest loans originated and underwritten at least 50% by commercial banks. In conjunction with Phase III, the City's Local Economic Development Act (LEDA) plan would be amended to specifically include external public interest banking activities.

Overall, it is expected that the Santa Fe Bank will generate net savings for the City ranging from $2.4 million the first year to $3 million in seventh year. This saving will allow the City to mitigate taxes paid by citizens while maintaining services. Tax mitigation has a positive impact on economic activity by allowing increased spending by households. However, the multiplier is a smaller multiplier because tax mitigation works through changes in disposable income rather than by direct expenditure. To the extent that an increase in disposable income is saved rather than spent, the multiplier is small. The BEA household spending multiplier for Santa Fe County are:

Output multiplier	0.8776
Earnings multiplier	0.2284
Value added multiplier	0.5461
Employment multiplier	8.4463

The above county level multipliers are adjusted by a factor of 0.830 to create city multipliers:

Output multiplier	0.7284
Earnings multiplier	0.1896
Value added multiplier	0.4533
Employment multiplier	7.0104

Table 2 gives the impact for the Santa Fe Bank. The City benefits from the Santa Fe bank through increased interest income on deposits, reduced interest cost by better timing issuance of bonds with the expenditure financed by the bond, and on profit earned on capital contributed to the bank. The reduction in taxes allowed by more efficient management of funds provided by the Santa Fe Bank will generate $1.5 million in gross receipts, $69 thousand in increased GRT revenue, and create 14 jobs by 2023.

Table 2: Santa Fe Bank Economic Impact ($000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Mitigation of Tax burden	$2,421	$2,551	$2,229	$2,597	$2,227	$3,309	$2,954
Economic Impact							
Gross Receipts (New Lending x .7284)	$1,763	$1,858	$1,624	$1,892	$1,622	$2,410	$2,152
Household Earnings (New Lending x 0.1896)	$459	$484	$423	$492	$422	$627	$560
Employment (New Lending x .91 x7.010/1,000,000)	15	16	14	17	14	21	19
Value Added (New Lending x 0.4533)	$1,097	$1,156	$1,010	$1,177	$1,009	$1,500	$1,339
Gross Receipts Tax (@ 3.1875 % of Gross Receipts)	$77	$81	$71	$83	$71	$105	$94

Source: Building Solutions, LLC, and author's calculation.

Crowd Sourcing

A parallel proposal put forward by Building Solutions is to establish a crowd sourcing hub to facilitate local lending interaction. Certainly, crowd sourcing is likely to account for a larger share of funding going forward, both nationally and locally. However, the loan activity generated on a hub is likely to draw funds from other more traditional sources, so lending on the hub per se does not represent a net increase in lending. On the other hand, by providing a low cost method for identifying high quality projects, crowd sourcing hubs will improve the efficiency of the financial system. In effect, a hub will make it easier to do business in Santa Fe. Thus a hub plays the same role as, say, building a road that reduces traffic. Identifying the economic impact from infrastructure projects, such as a new road or the creation of a crowd sourcing hub, is notoriously difficult. Good roads, nice parks, art districts, and lending hubs all contribute to the economic viability of a community, but actually attributing a particular job to a particular infrastructure project is usually not possible. Given this, we elect not to provide an estimation of the economic impact from a crowd sourcing hub.[10]

[10] To be clear, we decline to quantify the economic impact of creating a crowd sourcing hub does not invalidate the desirability of creating a crowd source lending hub. It is only that quantifying the economic impact is difficult when the impact arises from overall business climate, rather than from a direct increase in economic activity.

Combined Fiscal and Economic Impacts

The economic impacts analyzed in the prior section are positive, but modest. The most meaningful impact for a SFB implementation strategy comes from basic fiscal management tools: better cash management, increased internal funding, and improved liquidity management tools. These all promise to reduce the current deficit projected by City management.

The forecast below is not meant to be predictive, however, it is based upon reasonable assumptions given the size of the City investment portfolio and the size of the Santa Fe banking market. The 7-year forecasts are developed using a simplified banking spreadsheet, designed to illustrate the areas of potential savings and income, rather than an attempt to replicate a banking "call report," the mandatory report required of all regulated banks. In order to forecast and evaluate the economic and fiscal impact of a public bank in Santa Fe, various assumptions had to be made, most of which are clearly evident in the following spreadsheets. Some of these assumptions are summarized below:

> *The primary assumption that drives the largest portion of the return to the City (and other participating public entities) is the extent to which the City can fund its own debt using its own cash deposited in the SFB. This requires better discipline in forecasting cash needs, better capital improvement project (CIP) management, and alternative liquidity management tools with the SFB.*

a) Most of the City's cash is transferred to the SFB, except for cash with 3rd party restrictions and cash being used to pay off bonds which may be advantageous to pay off in the next 2 to 3 years. The savings associated with those pay-offs is NOT included in this analysis. That additional revenue could be substantial depending upon interest rates at the time of the pay-off.

b) The participation of other public entities, such as the County, is small and is inserted for illustrative purposes only. A larger participation would significantly increase the potential of a public banking entity to "self-fund" public projects in the region, for and on behalf, of a largely over-lapping tax base.

c) Earnings in the bank are retained in the SFB in order to bolster capital. Slower growth or a more rapid utilization of deposits for public sector loans could result in common stock dividends. The low loan to deposit ratio in the early years of the bank reflect the transition from a treasury management function to a more traditional banking function.

d) The interest rate on loans reflects a discount from the external bond markets, but also may reflect shorter maturities. There has been no effort to predict an increase or decrease in interest rates. The "savings" to the borrower is forecast to be 1.5% regardless of maturity or interest rate level.

e) The SFB is projected to maintain a 10 basis point spread (.10%) between the interest paid and the interest received on cash, perhaps reflecting the cost of managing the cash portfolio. Again, this assumption does not require a specific assumption about the direction of future rates.

f) Reserves for bad debts are ignored until outside (non-public sector) loans are made.

g) Operating expenses are projected (personnel, lease, and professional); however, it is difficult to discern what the "incremental" expense would be above and beyond current treasury management expenses. In fact, changes in these assumptions do not make a big difference to the over-all fiscal impacts. Additionally, if and when other public entities join the SFB, there could be an over-all savings to the public sector as a whole, if redundant roles can be consolidated in the SFB. The largest and least predictable expense may be the need of a chartered bank to be a member of the FDIC (current State requirement) and to conform to a host of regulatory guidelines. The cost has been projected, yet the simplified construct of the bank should permit for reduced insurance costs and for simplified regulatory reporting. At least for the foreseeable future almost all loans and deposits are within the public sector.

h) The equity required for the SFB, targeted at 10%, is assumed to come from the City. It is possible that this equity could be provided from a consortium of public entities, including the County and other public bodies. Additionally it may be that one or more charitable foundations may find an investment in the SFB an appropriate "impact investment" of their 'corpus' assets. The 8% p.a. preferred rate on the equity is probably high, but does not have a large impact on the cumulative value of the SFB strategy because the cash is coming from the City and being returned to the City.

i) The 6 to 12 month extension of the Weighted Average Maturity (WAM) on deposits merely reflects a modest extension in WAM, resulting in a .50% increase in average rates, regardless of the underlying interest rates.

j) The collateral reduction program reflects a very modest participation by the bank depositories in making increased loans to the CDFIs and Credit Unions. The value of that program comes from a small potential increase in deposit rates, and the economic impact of increased lending.

A thorough and complete implementation plan will refine this forecast and will better reflect policies and procedures that a board will implement. That said, the basic building blocks are found in the following 7-year projections.

Public Bank Balance Sheet ($000s)							
Scenario: The bank starts as an internal City entity which solely handles internal City loans. No later than Year 4 (2019 or 2020) the City has obtained a State Banking Charter and it invests $10 million of equity into the bank for which it receives a preferred return. (N.B. This could come from other sources). The County joins the City by making a deposit and using the bank for County funding and intra-public lending. In the final year a small LEDA qualified external loan is made by the bank (e.g., affordable housing, economic development, etc.) at the request of a local community bank with 50% or more participation.							
	Internal Operations Only			**Bank Charter City Contributes Equity County Adds Deposits**		**3rd Entity Adds Depost**	**LEDA Loan**
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**
Assets							
Cash and cash equivalents	110,200	90,220	80,240	92,000	82,000	72,000	57,000
Reinvested Retained Earnings & Reserves	471	1,272	2,101	3,167	4,390	6,231	8,369
Loans and advances	30,000	50,000	60,000	90,000	100,000	130,000	145,000
City	30,000	50,000	60,000	70,000	70,000	80,000	80,000
County				20,000	30,000	40,000	50,000
Other Public Entity (SFISD?)						10,000	10,000
Private Participation							5,000
Other assets							
Total assets	140,671	141,492	142,341	185,167	186,390	208,231	210,369
Liabilities							
Deposits from Public Enterprises	140,000	140,000	140,000	170,000	170,000	190,000	190,000
City (after early bond redemptions)	140,000	140,000	140,000	140,000	140,000	140,000	140,000
County	-	-	-	30,000	30,000	30,000	30,000
Other Public Entity (SFISD?)						20,000	20,000
Other liabilities							
Total liabilities	140,000	140,000	140,000	170,000	170,000	190,000	190,000
Equity							
Retained earnings	471	1,272	2,101	3,167	4,390	6,231	8,269
Reserves (only on external loans)							100
Equity (initially just personnel and eqmt)	200	220	240	12,000	12,000	12,000	12,000
Total equity	671	1,492	2,341	15,167	16,390	18,231	20,369
Total liabilities and equity	140,671	141,492	142,341	185,167	186,390	208,231	210,369
Equity Ratio (target 10%)				8.19%	8.79%	8.76%	9.68%
Loan to Deposit Ratio	21%	36%	43%	53%	59%	68%	76%
Note: This proforma has been developed in order to illustrate the value associated with internal funding of capital expenditures, initially just within the City, and later in and among other public entities. The volume of loans are not predictive, but rather illustrative. The Equity Ratio target can be achieved either by reducing deposits accepted or by increasing equity contributed.							

The forecast assumes that the bank does not become fully chartered until the third year. This perhaps is an unnecessarily conservative assumption. To the extent that the governance tools and the necessary policy decisions can be adopted more quickly, the SFB can make the transition to a chartered bank earlier.

Public Bank Profit and Loss Statement ($000)

	Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Avg. Interest income on Loans	2.50%	750	1,250	1,500	2,250	2,500	3,250	3,625
Interest Exp. - Pd on City Deposits	0.40%	560	560	560	680	680	760	760
Net interest income		190	690	940	1,570	1,820	2,490	2,865
Net income from bank deposits	0.50%	551	451	401	460	410	360	285
Other revenue - Guaranty fees?								
Other income								
Revenue		741	1,141	1,341	2,030	2,230	2,850	3,150
Reserves for bad loans (Pvt only)	2.00%	-	-	-	-	-	-	100
Incr. Personnel expenses (1)		200	220	240	300	320	320	320
Operating lease expenses		20	20	22	24	27	29	32
Depreciation and amortization								
Other expenses (legal, act'g, etc)(2)		50	100	**250**	640	660	660	660
Expenses		270	340	512	964	1,007	1,009	1,112
Profit for the year		471	801	829	1,066	1,223	1,841	2,038
Preferred Rate on Equity	8.00%	16	18	19	960	960	960	960
Net Cash Flow		455	784	810	106	263	881	1,078

(1) Most functions can be "transferred" from the City, however, additional senior oversight may be useful. This should more than cover expenses.

(2) One time professional expense for Charter is added to Year 3. FDIC waiver or reduction is expected given "in-house" nature of deposits. Additional $500,000 is added annually thereafter for regulatory compliance.

Net Savings/Earnings for the City ($000s)

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
City Savings Only	**Assumptions**							
Interest Savings on Bonds	1.50%	450	750	900	1,050	1,050	1,200	1,200
Upfront Bond Issuance Costs (1)	5%	1,500	1,000	500	500	-	500	-
Split of Bank Earnings (Attributed Public Entities based on Deposits)								
"Bank" Profit		471	801	829	1,066	1,223	1,841	2,038
Contributed Equity		200	220	240	12,000	12,000	12,000	12,000
Return on Equity	8%	16	18	19	960	960	960	960
Net Income Avail. After Equity		455	784	810	106	263	881	1,078
Split of Equity Returns:								
City		100%	100%	100%	82%	82%	74%	74%
		455	784	810	87	217	649	794
County		0%	0%	0%	18%	18%	16%	16%
		-	-	-	19	46	139	170
3rd Public Entity		0%	0%	0%	0%	0%	11%	11%
		-	-	-	-	-	93	113
Net City Improvement Incl. Equity		2,421	2,551	2,229	2,597	2,227	3,309	2,954
Cummulative Value to City (2)		2,421	4,972	7,201	9,798	12,025	15,334	18,288
Other Potential Revenue Enhancements in Treasury Management:								
6 to 9 month extension in WAM (3)								
Deposits with Banks		110,200	90,220	80,240	62,000	52,000	22,000	7,000
Incr. in Rates	0.5%	551	451	401	310	260	110	35
Collateral Reduction (4)	Program	5,000	5,000	5,000	10,000	10,000	10,000	10,000
	0.10%	5	5	5	10	10	10	10
Total City Return incl'g Treasury Mgmt.		2,977	3,007	2,635	2,917	2,497	3,429	2,999
Incr. in GRT from Economic Impact (5)		236	294	354	620	734	828	1,084
Total Incr. from "Public Banking" Strategy		3,213	3,301	2,989	3,537	3,231	4,257	4,083
Cummulative 7-year Estimate of Value to City Only (6)								24,612

Notes:

(1) Bond issuance costs including legal, underwriting, and advisory. These normally are paid out of bond proceeds.

(2) The cumulative value to the City illustrates that the Equity investment in the bank is returned within 5 years.

(3) The deposits in banks decline as the City uses more of its cash to internally fund projects.

(4) Most value from collateral reduction comes from the economic stimulus produced from increased lending in the community (see Incr. GRT below). As the maturity is extended, or as liquidity tightens, the cost of 102% collateral increases. This estimate is ONLY on the funds that are dedicated to the CDFI's and Credit Unions.

(5) This value is attributable to the increase in Gross Receipts Taxes from increased lending.

(6) A larger participation in the bank by other public entities would significantly increase returns to taxpayers.

Summary of the Financial and Economic Impacts

The SFB forecasts suggest that a cumulative value over 7-years to the City exceeds $24 million. While this value is significant and points to a logical and robust public policy, the majority of the returns come from better treasury management, as follows:

- Funding more capital needs internally
- Implementing better cash management forecasting policies
- Lengthening maturities on cash deposits

The portion of the public banking impact that may be understated in only 7-years of operation is the ability longer term to play a more active role in economic development activities with the community banks. This includes, but may not be limited to the following:

- Increasing the Collateral Reduction Program based on good collective work in the financial community
- Providing guarantees on loan programs that have a direct impact on the collective common economy with measurable returns to the public sector
- Participating in loans underwritten by the community banks in times of decreased liquidity, especially after excess reserves are absorbed and reduced.

It is useful to note that between 1940 and 1960 the Bank of North Dakota did nothing other than intra-public lending. The credibility and management capability to expand its business came in a deliberate and thoughtful manner. In Santa Fe it is critical that the City build the trust and capacity steadily and professionally. This also has the added advantage of building the tools and the relationships with the community banks to enhance their ability to contribute to the well-being of the City and the community.

Appendix A- Consultant Curriculum Vitae

KATHERINE L. UPDIKE

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Ms. Updike has led the development and consulting business of Building Solutions LLC for over 20 years after serving as a Managing Director of Bankers Trust Company and The Chase Manhattan Bank, as well as Vice President and Division Head of First Chicago. As a banker she headed strategic planning for corporate business, managed the relationship with the Farm Credit System, including the Bank for Cooperatives, one of the closest examples of a national public bank. Ms. Updike has combined her extensive financial background with a strong commitment to the development of healthy communities. As a developer she founded a new charter school in Colorado, led the fundraising and implementation of programs for the YWCA Senior Housing (the largest in the country), the rehabilitation of a hospital complex for the largest social service agency serving the Hispanic community in Chicago, and multiple initiatives for the largest Illinois homeless agency. Most projects entail complex documentation, multiple monitoring requirements, and extensive political coordination.

She has sat on both sides of the banking table (borrower and lender). She wrote an Investment Memorandum to form a non-profit bank to serve the border region, as a conduit for local and international (North American Development Bank) public and private funds (summary below). The violence in northern Mexico derailed interest in mounting the initiative, however, the underlying need to fill the void created by decreasing community lending by national financial institutions is a broad issue.

In most projects she has had to combine the efforts of volunteers, board members, elected officials, paid professionals, donors, and staff, often an artful balance of setting clear goals and celebrating successes.

Educational Background:
MBA, Escuela de Administración de Negocios (Founded by Stanford Graduate Business School)
Lima, Perú (fluent in Spanish)
Bachelors of Arts, Mathematics and Biology, Texas Tech University

Selected Relevant Professional/Community Activity:
American Water Recycling
Founding Board Member, patent pending water nano-filtration membrane. First customer is in New Mexico. Filtration methodology is transformative, if scalable.

City of El Paso
Chair, City Plan Commission; Appointed by Mayor to Downtown Tax Increment Redevelopment Zone

Sunland Park, NM
Wrote a Municipal Redevelopment Area (MRA) Plan for the town at the request of a private development entity. Advised several developers on potential redevelopment approaches.

Public Service Board/El Paso Water Utilities
Advised utility on alternative land strategies which would complement water conservancy objectives and reduce budget and taxation forecasts through more sustainable development patterns and incentives.

Studios at 18th and Wabash, Chicago, IL
Brought together City of Chicago, the State of Illinois, and other financial parties in order to build the first new affordable single room occupancy residence in downtown Chicago in over 50 years - with full neighborhood support for a large homeless agency and 17 churches and synagogues. Later developed second 170 unit building and new headquarters for agency. Multiple layers of financing, monitoring, and reporting required extensive coordination with all parties.

Model Job Training Program for Homeless, Chicago, IL
Defined and implemented a landscape management program (related revenue for the non-profit) bringing together the homeless agency with the leading U.S. corporation in landscape services and the City of Chicago. Program generated substantial revenue for non-profit and led to follow-up programs in maintenance and food-service.

Marble Charter School, Marble, CO
Wrote and successfully obtained the eighth charter in Colorado. Formed board, hired staff, and successfully obtained funding, contractors, and volunteers to rehabilitate National Historic Register 1908 school house into both Historical Museum and school. School continues to thrive and has become the anchor institution for the small community.

Building Solutions LLC – Advisory Services

Building Solutions provides development advisory services to projects which have strong social capital goals. Projects include work with financial institutions, operating corporations, non-profits, and municipalities in order to design strategies which address specific goals of the Board and/or Executive Management. The development of a strategy – including key implementation steps – is key to realizing any project whether it involves "bricks and mortar" or the roll-out of a new product or concept. Most strategic planning is a process of discernment between the organization, its key constituents (shareholders, funders, clients, etc.) and the neighborhoods and markets in which the entity practices.

The Building Solutions team always encourage clients to go well beyond the typical SWOT (strengths, weaknesses, opportunities, threats) approach to strategic planning and to look for those services, ideas, and approaches which help the organization 'break out of the mold'. Strategic "leaps" that have been significantly bolstered by assistance from Building Solutions are:

- Roll-out of a risk management service and system to clients by an international financial institution using cutting edge research, firewalls, and advisory services.
- Development of a landscaping service which used the finest industry training with homeless services from a large social service agency. The business is still running profitably (for both entities) and has spawned hospital maintenance and food service companies all of which contribute significantly to the sustainability of the services to homeless (not to mention the service to the formerly homeless themselves).
- Development of an internal monitoring and valuation system for a privately held corporation in order to assist family members contribute more productively to firm decision-making.

In 2008-2009 the drop in Federal and private bank lending along the US-Mexico border (both sides) was becoming increasingly alarming to both the public and private sector. Ms. Updike conceived of a Border Bank concept which could provide a parallel banking structure on both sides of the border funded by the government, private banks, and philanthropic (foundation) entities. The bank structure was designed to start in El Paso/Juarez and then expand along the border, both East and West as funding and experience allowed. The concept was received positively, however, the increasing violence in Mexico, particularly in Cd. Juarez, reduced the appetite for any funding program.

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Dr. Christopher A. Erickson is a Senior Economic Analyst at Arrowhead Center where he specializes in economic impact studies. He has been on the faculty of the Department of Economics and International Business at New Mexico State University since 1987. His main research interest is regional and border issues and he is the author or co-author of numerous articles, including articles on NADBank, the Mexican peso crisis, China's impact on the Mexican maquila industry and a supplemental money and banking text that was adopted on over 100 campuses. Chris has written a weekly column on the local economy for the Las Cruces Bulletin since 2008. He has authored or co-authored numerous studies on local businesses and industries for clients including the New Mexico Military Base Commission, the Lea County Economic Development Corporation and the City of Sunland Park. Dr. Erickson frequently speaks on issues concerning New Mexico, Las Cruces, and the border economy. He currently serves as the editor of the New Mexico Business Outlook.

Education

PhD, Arizona State University, 1989.
BA, Willamette University, 1980.

Professional Positions

Professor, New Mexico State University, College of Business Administration and Economics, Las Cruces, NM. (August 1987 - Present).
Senior Economic Analyst, Arrowhead Center. (January 2012 - Present).
Visiting Professor, National Chung Hsing University, Taichung, Taiwan. (June 2004 - July 2004).
Visiting Professor, Instituto Tecnologico y Studios Superiores de Monterrey, Juarez, Chihuahua, Mexico. (August 2003 - December 2003).
Visiting Professor, NIRMA Institute of Management, Ahmedabad, Gujarat, India. (August 2000 - December 2000).

Awards and Honors

Contributor: Western Blue Chip Indicators, 1991-Present
Stan Fulton Research Award, College of Business. (August 2012).
Domenici Fellow, Domenici Institute. (May 2012).
College of Business Faculty Graduate Teaching Award, New Mexico State University. (August 2011).
Daniels Ethics Fellow, Daniels Fund. (April 2011, April 2013).
College of Business Faculty Service Award, New Mexico State University. (August, 2007).
College of Business Undergraduate Teaching Award, New Mexico State University. (August, 1992).

Selected Publications

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E. Examination of Portfolio by Maturity and Average Yield

The weighted average maturity (WAM) decreased from 322 days to 283 days. The shift is largely due to the called bonds that were converted to cash. The term structure has been shortened in anticipation of the Federal Reserve beginning to increase short term interest rates. This shorter portfolio maturity structure reduces market risk and better positions the portfolio to take advantage of expected rate increases later this year.

The first table below shows the term distribution by percent of the portfolio, and the second table shows the same distribution by average yield. On June 30th, 51% of the portfolio was either fully liquid or scheduled to mature in less than 6 months with another 38% scheduled to mature in under two years.

PORTFOLIO BY MATURITY

Short-Term	April	%/Total	May	%/Total	June	%/Total
Immediately - 24 Hrs. Notice	$ 105,030,018	41.95%	$ 82,407,221	36.57%	$ 92,466,867	40.84%
NM Local Gov't Invest. Pool	694,655	0.28%	694,655	0.31%	694,655	0.31%
Less than Six Months	19,450,000	7.77%	22,950,000	10.18%	23,450,000	10.36%
Subtotal Short Term	$ 125,174,673	50.00%	$ 106,051,876	47.06%	$ 116,611,522	51.50%
Long Term	**April**	**%/Total**	**May**	**%/Total**	**June**	**%/Total**
One Year	$ 27,268,896	10.89%	$ 29,268,999	12.99%	$ 31,769,101	14.03%
Two Years	66,556,213	26.59%	63,704,753	28.27%	56,203,600	24.82%
Three Years	26,069,307	10.41%	21,065,503	9.35%	19,064,710	8.42%
Three to Five Years	5,275,000	2.11%	5,275,000	2.34%	2,775,000	1.23%
Subtotal Long Term	$ 125,169,416	50.00%	$ 119,314,255	52.94%	$ 109,812,411	48.50%
TOTAL	**$ 250,344,089**	**100.00%**	**$ 225,366,131**	**100.00%**	**$ 226,423,933**	**100.00%**
Weighted Average Maturity - Days		**307**		**322**		**283**

PORTFOLIO BY MATURITY AND AVERAGE YIELD

Short-Term	April	Ave. Yield	May	Ave. Yield	June	Ave. Yield
Immediately - 24 Hrs. Notice	$ 105,030,018	0.20%	$ 82,407,221	0.20%	$ 92,466,867	0.20%
NM LGIP	694,655	0.13%	694,655	0.12%	694,655	0.13%
Less than Six Months	19,450,000	0.40%	22,950,000	0.38%	23,450,000	0.34%
Subtotal Short Term	$ 125,174,673	0.25%	$ 106,051,876	0.24%	$ 116,611,522	0.23%
Long Term	**April**	**Ave. Yield**	**May**	**Ave. Yield**	**June**	**Ave. Yield**
One Year	$ 27,268,896	0.35%	$ 29,268,999	0.40%	$ 31,769,101	0.43%
Two Years	66,556,213	0.62%	63,704,753	0.65%	56,203,600	0.68%
Three Years	26,069,307	0.99%	21,065,503	1.03%	19,064,710	1.03%
Five Years	5,275,000	1.25%	5,275,000	1.25%	2,775,000	1.25%
Subtotal Long Term	$ 125,169,416	0.70%	$ 119,314,255	0.68%	$ 109,812,411	0.70%
TOTAL	**$ 250,344,089**	**0.47%**	**$ 225,366,131**	**0.47%**	**$ 226,423,933**	**0.46%**
Weighted Average Maturity – Days		**307**		**322**		**283**

Sunday, 19 July 2015 20:46

State-backed crowdfunding initiative hits 97% success rate in first year

http://mibiz.com/item/22697-state-backed-crowdfunding-initiative-hits-97-success-rate-in-first-year

Written by Andy Balaskovitz


The Michigan Economic Development Corp. worked with the crowdfunding platform Patronicity and the Michigan Municipal League to create the Public Spaces, Community Places initiative, which allows residents to donate to public projects. Local examples of the public placemaking initiative include the Exit Space public art installation project from the Urban Institute for Contemporary Arts in Grand Rapids, which raised $10,315 that was matched with $10,000 in funding from the state.*COURTESY PHOTO OF MURAL AT UICA*

As many remain skeptical of crowdfunding's ability to bolster growth among private-sector entrepreneurs, economic developers have found the fundraising model holds promise for public placemaking efforts statewide.

In the first year of the **Michigan Economic Development Corp**.'s "Public Spaces, Community Places" initiative, a partnership with crowdfunding platform Patronicity and the **Michigan Municipal League**, 33 out of 34 projects from around the state have met their fundraising goals, according to the program's website.
As of July 8, five more projects were still accepting donations and two of those had hit their goals before deadline.

Observers say a 97-percent success rate is a rare figure among crowdfunding campaigns.

"I was hoping for a 50-percent success rate," said Katharine Czarnecki, the MEDC's community development director who oversees the program. "The fact that we have 97 percent is crazy."

As part of the relatively small program — fundraising goals range from a few thousand dollars to $100,000 — the MEDC matches the amount raised from the public, or "patrons," with grants.

To date, the MEDC has matched just less than $900,000 in grants, while project organizers have raised even more than that through donations beyond the match goal, according to the project website.

The projects are as varied as the communities pursuing them. They range from a historic manufacturing building restoration in Calumet and a recreational sports complex in Sparta to an outdoor soccer field a few blocks from the Capitol Building in Lansing and a public art installation in downtown Grand Rapids. They also include a neighborhood opera house in Detroit and a new pavilion along the Kal-Haven trail in Southwest Michigan.

Instead of the state telling communities what kind of placemaking projects they should do to get funding, the Public Spaces program lets communities decide what might get the most public buy-in.

"With this project, we are trying to drive public spaces to be reactivated," Czarnecki said. "The state is focusing on placemaking and we kind of left it up to the community to find what projects they want completed."

Czarnecki said state funding levels will remain at $750,000 for the fiscal year, and the MEDC is hoping to get $2 million for the next fiscal year. Money for the program comes from the MEDC's corporate fund, which draws revenue from tribal gaming compacts.

"It has been tremendously successful from our end, with the project creators and with donors who love it as well," said Ebrahim Varachia, president and co-founder of Detroit-based **Patronicity**. "It has been incredible to see that this program has allowed for more than $2.3 million in community impact from the state and citizens."
"It is quite rare," he added, to see crowdfunding initiatives with that level of success.

Finding partners

The state originally approached Patronicity — which grew out of a business incubator that the MEDC supported — about using the platform to help startup food trucks in Detroit. That morphed into an idea for funding public projects whereby the state uses community grants to match fundraising efforts.

Varachia refers to the model as "crowd-granting."

"It is revolutionizing the way funding has been done," he said. "With the match, there is so much more on the line. If you hit your goal, you don't just get that money, you double the amount. Donors love it because they feel their $10 or $100 is $20 or $200. It really changes what projects can be done by giving them a lot of leverage."

Czarnecki said the program "actually got off to a slow start" with funding available only for an alley restoration project in Midtown Detroit. Organizers there raised more than $52,000, which the MEDC matched with a $50,000 grant.

After Jan. 1, "projects really started to take off. We've been successful in every project except for one," Czarnecki said.

The project that failed to reach its fundraising goal was for redeveloping a park along the Kalamazoo River near **Arcadia Brewing Co.**'s new pub just east of downtown Kalamazoo. An Arcadia official could not be reached for comment.
While the Kalamazoo project did not reach the goal to qualify for the state match, Varachia said it will be able to keep the funds raised from the public because of the way its fundraising was structured from the start. Other Patronicity projects are all-or-nothing, meaning donors' credit cards aren't billed if the goal is not met.

'Eye-opening innovation'

Using crowdfunding in the private sector has led to mixed results and skepticism, particularly with equity or securities-backed fundraising. *MiBiz* reported in June about the waning interest among entrepreneurs in securities-backed crowdfunding after lawmakers passed the Michigan Invests Locally Exemption (MILE) Act in 2013.
"I think there is a lot of merit to continue to explore that as a financing mechanism for real estate and small business development," Czarnecki said. "But I can tell you our leadership team is a little hesitant [to support that] until things get ironed out at the state and federal level."

Specifically, she cited concerns over fraud and a lack of federal rules or guidelines.

However, the matching funds the state provides for successful fundraising goals as well as Patronicity's willingness to provide support and training to project organizers make this community-based crowdfunding model unique, Varachia said.

"We see ourselves as the training wheels," he said.

The **Urban Institute for Contemporary Arts** in downtown Grand Rapids raised $10,315, which was matched with $10,000 from the state, for its Exit Space project, an ongoing public art program with installations throughout the city. The funding will allow for two or three additional murals within the city, said Kristen Taylor, UICA's development director.

“The thing that I liked about the [Public Spaces] program is that it was very specific to placemaking,” she said. “It hit the UICA mission, a large part of which is to [foster] a creative community. It was a way to involve the entire community on a project that would directly benefit the entire community.”

Bob Trezise, president and CEO of the **Lansing Economic Area Partnership**, the capital region’s economic development agency, called the program “a really eye-opening innovation in how we’re going to move forward with economic development.”

Four projects in greater Lansing — including the **Beacon Field** soccer project downtown that exceeded its $60,000 fundraising goal by more than $10,000 this year — are participating in the program. Plans to raise $35,000 to upgrade the city of Charlotte’s tennis courts were also announced recently.

“It’s not the answer, it’s just a different answer” that could be useful during times of cuts to incentives and municipal budgets, Trezise added.

Trezise questions how successful the model would be for larger, more expensive endeavors. But for now, it’s working as a “marginal solution,” he said.

“While it’s a small program, it’s not unimportant,” he said. “I’ve been so impressed with the results so far (that) I begin to wonder whether we could actually use this tool as an incentive to companies. I wonder how far we can push the envelope here. It’s been an important experiment and one that’s worked with rave reviews.”

Appendix D - List of Abbreviations

Term	Definition
BEA	Bureau of Economic Analysis. The BEA is a division of the US Department of Commerce which tracks important economic statistics.
BND	Bank of North Dakota. Established in 1919, BND is often referenced as the prime example of a public bank. It is a member of the Federal Reserve System, but it is not a member of the FDIC.
CDFI	Community Development Financial Institution. This is a non-profit lending entity which focuses on under-served markets in a given locale.
CIP	Capital Improvement Project for the City
CRA	Community Reinvestment Act. The CRA was issued in 1977 in order to monitor and require that banks provide services to their entire community, especially market areas that are less advantaged. In particular it was designed to prevent "redlining," a practice which avoids making mortgages in certain poorer neighborhoods.
FDIC	Federal Deposit Insurance Corporation. This entity was federally established in 1933 in order to reestablish confidence in banks. Banks pay fees to the FDIC in order to receive insurance on the first $250,000 of a customer's deposits.
Fed	The Federal Reserve System. The Fed is the US central banker. It allows for efficient clearance of money between and among banks. It also is responsible for decisions on money supply and liquidity, which it exercises through the purchase and sale of government securities. Although it is owned by the US government, nationally chartered banks are required to hold stock in their regional Federal Reserve Bank. The Federal government receives all profits, after a dividend is paid to the stockholders of the regional banks.
GDP	Gross Domestic Product. GDP is a measure of economic output.
GRT	Gross Receipts Tax. The GRT is the primary revenue source for the City and is effectively a sales tax on all goods and services, except medicine and food.
LEDA	Local Economic Development Act. The Act allows New Mexico governing bodies to create a plan which permits certain economic development investments which might otherwise be prohibited by "anti-donation" laws which restrict public investment in private ventures.
NMFA	New Mexico Finance Authority. NMFA provides bonding capacity and bond issuance support to entities throughout the State, including at times Santa Fe. It also manages programs which target economic development support to difficult to fund segments of the State.
SEC	Securities and Exchange Commission. The SEC was created in 1934 and has primary responsibility for governing and enforcing laws regarding securities, publicly or privately offered loans and equity. It is a Federal agency.
SFB	Santa Fe Bank. SFB is the working title used to reference the public bank approach used in this report. No name has been selected. It is purely used for convenience.

<u>Appendix 3</u>

Legal Memorandum Concerning the Public Bank proposal prepared for
"WeArePeople Here! Educational Fund"
dated September 25, 2015

RODEY | *Law*

Memorandum

TO: WeArePeople Here! Educational Fund

FROM: David P. Buchholtz DPB

SUBJECT: City of Santa Fe Public Bank Proposal

DATE: September 25, 2015

In connection with your work advocating for the establishment by the City of Santa Fe, New Mexico (the "City") of a bank to be owned by the City, you have asked us to address certain legal considerations which will need to be considered by the City in connection with this undertaking. We have identified six areas of consideration we believe would need to be addressed in connection with the City's moving forward on this project. These issues are identified below, along with a discussion of our advice regarding solutions to these challenges.

1. Home Rule Authority. Our review of New Mexico statutes finds no specific legislation authorizing the establishment of a bank. However, Article X, Section 6 of the New Mexico Constitution and Sections 3-15-1 through -16 NMSA 1978, as amended, permits municipalities to adopt a charter granting them authority to become a home rule charter municipality. The City became a home rule municipality in 1997. Section 3-15-13(B) NMSA 1978, as amended, states that:

> "A municipality that adopts a charter may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter. A liberal construction shall be given to the powers of municipalities to provide for maximum local self-government."

The scope of the extent of home rule authority has been regularly evaluated by New Mexico courts. The courts apply a two-step analysis. In the first step, a court asks whether there is a state law which is a "general law": one that applies generally throughout the state, relates to a matter of statewide concern and impacts inhabitants across the state. The second step requires determining whether the general law expressly denies the City's power to take certain action. See Smith v. City of Santa Fe, 139 N.M. 410 (N.M. Ct App. 2006), aff'd, 144 N.M. 786 (2007).

Two recent cases, both involving the City, illustrate New Mexico courts testing local legislation against the scope of home rule authority. In New Mexicans for Free Enterprise v. City of Santa Fe, 138 N.M. 785 (N.M. Ct. App. 2006), the Court of Appeals upheld an ordinance of the City regulating the minimum wage scales. In Smith, supra, the Court of Appeals upheld an ordinance of the City regulating domestic wells. And on appeal, the Smith holding and rationale were affirmed by the New Mexico Supreme Court.

We believe that the holdings and rationale expressed in the New Mexicans for Free Enterprise and Smith decisions would outweigh and have a more persuasive effect compared to the earlier, more restrictive court rulings on home rule authority. These more recent decisions are grounds on which a court may hold that the City would be acting within its home rule authority in adopting legislation to permit the formation of a city owned bank.

We are not aware of any general state law dealing directly with this issue. There is legislation authorizing and regulating the establishment of a variety of state financial agencies -- for example, The Banking Act Sections 58-1-1 through -85 NMSA 1978, as amended, and the New Mexico Finance Authority Act Sections 6-21-1 through -31 NMSA, as amended. A distinction should be made between the possibility of denial of the City's right to establish its own bank based on upon the existence of state financing authorities such as the NMFA, and the possibility of denial based upon the failure to comply with banking regulations that would likely still apply to the City's bank under the Banking Act. In our view, and in light of Smith and New Mexicans for Free Enterprise, so long as the City's bank complies with the Banking Act's requirements, neither of these considerations should lead to denial of the City's right to establish its own bank.

2. Public Purpose Issues. Related to the analysis of whether a home rule chartered community could adopt legislation authorizing the creation of a public bank, the question of whether such legislation would be within the government's police power, that is, legislation to promote the health, public safety, morals and general welfare of the community, likely also will be considered. Early court decisions often limited the police powers of local government when new ventures were proposed. See, for example, Smith v. City of Raton, 18 N.M. 613 (1914) (suggesting that construction of an opera house not a public purpose within a narrowly drafted statute). Notwithstanding those older cases, we believe that modern law, and in particular a court's interpretation of specific authorization, would view a bank as akin to permitted utility services which provide water, electricity, gas refuse and sewer service, all clearly public purposes. Moreover, the statutory developments on the state level, in promoting housing finance (see the Mortgage Finance Authority Act, Sections 58-18-1 through -27 NMSA 1978, as amended), and in promoting educational finance (see the Educational Assistance Act, Sections 21-21A-1 through -25 NMSA 1978, as amended), illustrate a legislative intent to allow government to participate in private finance matters. While not precedential for a New Mexico court, we think that the 97-year history of the Bank of North Dakota's success, as well as recent trends in jurisdictions such as California, Pennsylvania and Vermont in promoting a public bank, might be persuasive in arguing the public purpose of a municipal bank.

3. Borrowing Considerations. Presumably the City will be faced with considerations relating to how it might capitalize a bank or similar financial institution that is owned and created by the City. While the City may appear, from a balance sheet perspective, to have other adequate resources to capitalize a bank, unlike the state (which has two large permanent funds with capital

available for long term investment), given the City's comparatively limited resources, these resources may in large part have to be invested with liquidity and safety as paramount considerations, and not be available for long term investment. Therefore, putting aside for the moment policy, political and outstanding contractual considerations in the assessment of borrowing for this purpose, the Revenue Bond Act (Sections 3-31-1 through -12 NMSA 1978, as amended, provides guidance and opportunity regarding the ability of the City to borrow for these purposes. Section 3-31-1(C), in the text following subparagraph 10, relating to purposes permitting borrowing against gross receipts tax revenues, provides:

> The municipality may pledge irrevocably any or all of the gross receipts taxes … to the payment of … gross receipt tax revenue bonds … for public purposes authorized by municipalities having constitutional home rule charters.

Further, Section 3-31-1(F) provides authority for the issuance of project revenue bonds, which permits the issuance of bonds in connection with the acquisition of a revenue producing project (presumably including a bank) with repayment made from the revenues of the project. While bonds issued under these provisions may have a relatively expensive interest component, due to the lack of a federal income tax exemption for interest paid on these bonds, and due to the speculative nature of the investment, the question of the City's authority to issue bonds for this purpose should be positively determined by the text of the permissive language of the statute and a conclusion regarding the public purpose of the bank as set forth in Section 2 above.

4. Investment Authority. Questions may be raised about the limitations placed on the investment of capital made available for bank capital purposes by provisions of the New Mexico Constitution and statutes. Article VIII of the New Mexico constitution provides in part:

> All public money not invested in interest-bearing securities shall be deposited in national banks in this state, in banks or trust companies incorporated under the laws of the state, in federal savings and loan associations in this state, in savings and loan associations incorporated under the laws of this state whose deposits are insured by an agency of the United States and in credit unions incorporated under the laws of this state or the United States to the extent that such deposits of public money in credit unions are insured by an agency of the United States, and the interest derived therefrom shall be applied in the manner prescribed by law.

Following on that provision, Section 6-10-10 NMSA 1978, as amended, contains more detailed provisions regarding the deposit and investment of funds.

An important overlay to the restrictions imposed by the constitutional and statutory provisions above is the old Supreme Court case of Davy v. Day, 31 N.M 519 (1926). In Davy, the Court construed this constitutional provision in light of the need of the Bluewater Toltec Irrigation Districts to keep funds on hand in an out-of-state bank for bond repayment purposes. In permitting this activity, the Court used sweeping language to limit the scope of the constitutional provision such that, rather than strictly construed, it be read in a way that gives accord to business methods and practices:

> The constitutional provision simply means that the public funds, when not so used, shall be deposited for safe-keeping in the institutions named in the provision; but, when they are required to meet the public obligations, they may be expended in a business way, and according to business methods and practices.

It is important not to over read the statement of the Court in Davy, particularly in light of the circumstances in which it was made. Nevertheless, the Davy Court's construction of the constitutional provision supports that there should be some discretion available to the City in the manner in which funds are put to use in the context of capitalizing the bank. We caution, however, that, the Davy Court's reading also supports that the constitutional provision makes paramount the importance of the money's safe-keeping. To comply with this constitutional provision and the statutory provisions under the Davy decision, steps should be taken to protect the safety of the capital in any case.

5. Anti-Donation and Similar Constitutional Provisions. New uses of funds by government inevitably raise questions about the applicability of Article IX Section 14 of the New Mexico Constitution, often referred to as the Anti-Donation Clause. This Section provides in part:

> Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.

While much debated, the clause prohibits gifts by the state and local governments and the pledging of credit for private purposes, but it is not a bar to a wide range of congressional activities. A recent federal district court case, City of Raton v. Arkansas River Power Authority, 600 F.Supp.2 1130 (DNM 2008), while not precedential on New Mexico state courts, presents an excellent explanation of Anti-Donation clause principles. In the context of denying a claim by the City of Raton that it be relieved of its obligations of supplying power to third parties under a power sales agreement, the court went to great lengths to outline the history of litigation relating to the clause. The clause is not intended to interfere with contractual relations so long as a governmental entity receives valuable consideration in return for its money. In particular, the court noted:

> The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration. The Anti-donation Clause does not exist to get New Mexico's public entities out of bad commercial agreements.

It is impossible to predict at this time the form or content of any financial arrangements relation to the capitalization of a public bank. It can be said that as long as the consideration is made in a way so that the terms of any governmental investment deliver consideration to the government, the investment should not be challenged by Anti-Donation principals.

6. Financial Institution Regulations. It is beyond the scope of this memorandum to present a roadmap of state and federal bank formation regulations with a view toward defining the steps to be taken to meet those requirements. Suffice it to say, both the Banking Act cited above, other state laws and regulations, as well as federal law and regulations, provide a myriad of provisions regarding the establishment and operations of financial institutions. Any financial institution formed on behalf of the City would need to be aware of and to adhere to those provisions concerning financial institution

We hope this memorandum will be helpful to you in providing guidance on expected legal considerations relating to this proposal. We would be happy to visit with you, the City or other interested parties to help move this process along smoothly.

Appendix 4

Five-Year Model Supporting a Public Bank for Santa Fe prepared for
"WeArePeopleHere!", dated December 2, 2015

Banking on NEW MEXICO

A Public Bank for Santa Fe

an initiative of WeArePeopleHere!
(a 501C3 organization)

A Five-Year Model
Supporting a Public Bank for Santa Fe

A Debt Reduction, Budget Easing, Income Generating Strategy for the City of Santa Fe, New Mexico

December 2, 2015

Prepared for the People of Santa Fe
by the Brass Tacks Team of *Banking on New Mexico*
– an initiative of ***WeArePeopleHere!***

505 216 6376 TeamBrassTacks@gmail.com

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Abstract

The Brass Tacks Team (BTT) of the **Banking on New Mexico** initiative of ***WeArePeopleHere!*** evaluated the potential of a Public Bank for Santa Fe (The Bank) being part of the solution to the debt burden confronting our City.

An exercise was completed to determine whether The Bank could create a loan portfolio that could be the basis for a successful five-year start-up plan for The Bank. With the help of the City Finance Department, the Brass Tacks Team was able to determine loans and bonds that would become available for refinancing over a five-year period beginning in 2017, the year we propose opening a Public Bank for Santa Fe in the City of Santa Fe, New Mexico. A small amount of community partnership lending was also included. Though financial experts might prefer to work with a variety of interest rates, we chose a fixed 4% interest rate in our example. BTT restructured existing debt with two goals in mind: 1) lower the City's Debt Service (principal, interest and fees associated with the loans and bonds) and 2) lower the City's projected debt.

BTT restructured four existing loans and six bonds and then set out to create five-year projections for a new loan portfolio. Then BTT created "books" for the first year of operation.

Major findings:

By a careful restructuring of the four loans and six bonds available for refinancing into "New Loans", the City would be able to reduce annual debt service costs by $1,336,976 and reduce total City debt by $4,848,694 over a five-year period.

With six of those "New Loans" being available for refinancing in 2017, the Public Bank for Santa Fe could "open for business" on July 1, 2017 with a portfolio of City refinanced loans amounting to $45,519,398 and save the City $1,055,586 in debt service costs in its first year of operation.

For its first year of operation, BTT created a Journal for the income and expenses and generated an Income Statement and Balance Sheet for the The Bank's first year of operation. The Team found that a Public Bank for Santa Fe made a profit of $513,899 in the first year, and made $10,435,207 in profit over the five-year period.

The results demonstrate that The Bank is a sound economic resource for our community. Our research indicates that The Bank will continue to have a positive cash flow and loan growth. The City of Santa Fe will have a responsible banking partner and the community will begin to see opportunities to start and grow their businesses, or buy affordable homes.

Brass Tacks Team | Banking on New Mexico
Elizabeth Dwyer, Dan Metzger, Nichoe Lichen, Mary Schruben

A Public Bank for Santa Fe - Keep our community's money safe. Invest it locally.
Grow our community's potential.

The Public Bank Operations

Interest in a publicly funded bank for Santa Fe (The Bank) blossoms from the quaint notion that a public bank could serve the people. The Bank would be profitable and the profits would go back to the local community. Borrowing by the City -- the people's government -- would be more effective by reducing City debt along with returning profits to the City. Eventually The Bank might assist economic development and participate with private banks in community development efforts.

This is a preliminary look at the financial feasibility of establishing The Bank. It would be owned by the City of Santa Fe, but operated independently by professional bankers. The Bank's only customer would be the City as represented by its various departments.

A rule of thumb suggests that a bank must operate for three years before becoming profitable. The Bank is in the enviable position of existing in a City with adequate assets and liabilities to found a public bank that can be profitable in its first year.

What is a bank anyway?

In the business world a bank is a distinctive financial entity. It is a depository institution holding a bank charter, which means that it can legally receive deposits and it can borrow from the Federal Reserve Bank (the Fed). Depository institutions include savings and loan associations, savings banks and credit unions.

A bank differs from non-depository financial institutions, which act as intermediaries between savers and borrowers and may not accept deposits. Non-depository institutions include insurance companies, pension funds, securities firms, government-sponsored enterprises, and finance companies.

The Fed is a bank's bank. Banks have deposits at the Fed called reserve accounts. A bank's balance in its account at the Fed and cash on hand make up the bank's total "federal reserves." These should not be confused with loan loss allowances and loan loss expenses, which are held in "reserve" against losses.

The Fed provides check clearing services to depository institutions. The reserve accounts of the collecting institutions are credited for the value of the checks deposited, and the reserve accounts of the paying banks are debited for the value of checks presented for payment.

Like other businesses the financial position of a bank is largely revealed by its balance sheet and income statement.

Approach

Our approach is to look at hypothetical balance sheets and income statements in a way that can be understood by those unfamiliar with such documents. For those well acquainted with the subject we invite helpful suggestions.

The first balance sheet is a beginning balance sheet - Start 7/1/2017 (Table 3 page 9) - for The Bank after assets have been invested, funds deposited and a loan made. The second balance sheet is an ending balance sheet after the first year of operation - End 6/30/2018 (Table 4 below). For simplicity this hypothetical model approximates a loan portfolio with a single multiyear loan.

Assumptions:

We assume that initial core capital (stockholder's equity) for The Bank will be funded by the City at $9 million. In addition, approximately $1 million will be needed for consultants, equipment and staff training prior to start-up and for expenses during the first year prior to receipt of income.

Guided by the City of Santa Fe, New Mexico 2014 CAFR (Comprehensive Annual Financial Report) the City has debt in the form of bank loans and bonds of about $300 million. We assume that The Bank can refinance enough of the City's debt to be profitable in the first year of operation.

The Bank will focus on lending primarily to the City during the first five years of operation because reducing the debt burden of the City clearly will benefit the community as a whole. Additionally, lending to municipalities is a relatively low risk compared to other kinds of lending, an important concern with a newly established bank. First The Bank will do only a very small percentage of partnership lending with local financial institutions. Gradually as The Bank gains more experience it can increase that percentage when its professional banking staff is confident that doing so makes sound financial sense.

City deposits of about $100 million will be transferred to The Bank. All revenue collected by the City will be deposited in The Bank and City checks will be drawn from accounts there.

The Bank will be chartered and operated as a regular bank with a bank charter from the State of New Mexico. It will be a member of the Federal Reserve and have access to the Federal Payments System. Also, The Bank will abide by all capital ratios demanded by the Fed based on the Basel III rules. After a few years, a substantial fraction of profits will be distributed back to the city unless proscribed by bank regulators.

Currently, public deposits are collateralized at 102%. A small public bank cannot operate under this constraint, as it would interfere with pledging collateral for loans or repurchase agreements likely necessary for bank operations. We assume this constraint will be lifted, because the City will be using its own bank.

For this exercise The Bank will loan the City $50 million that will be deposited in its checking account. Immediately after the deposit is made, the City will withdraw all loaned funds to make payments.

A $50 million loan at 4% for 8 years would generate semiannual payments to The Bank in excess of $5 million total. Each payment will reduce the outstanding loan balance and contribute to interest income. We assume that deposits of at least that amount are made to the bank, so that deposit levels are back up to $100 million by the end of the year.

Hypothetical Bank Balance Sheet Details

Below we describe details of the hypothetical balance sheets and income statements. The first begins on July 1, 2017, and the second ends on June 30, 2018. These future balance sheets use current interest rates. By 2017, it is very likely that the Fed will have raised interest rates. However, that will not have a large effect on our result, because both The Bank's income and expense interest rates will increase accordingly.

The main concern will be the decreased value of our interest-bearing assets. For that reason we maintain these as short-term assets.

Operating Expenses

Bank expenses are shown in Tables 3 and 4 below and were estimated as discussed here.

Salaries and benefits are included for two managers, the President and Compliance Officer, and two capable assistants. Including benefits we expect a $500,000 estimate to be conservative. Also, we provide for a half-time IT (Internet Technology) contractor at $30,000. Rental for office space and equipment is estimated at $500,000.

We estimate Loan loss expense as a necessary element**.** This accounts for cash-flow losses from underperforming or restructured loans. For example, we need to make salary payments even if the loan portfolio fails to perform as expected. This amount is determined by bank management and reviewed by bank examiners.

We expect to pay about 1% on City deposits at The Bank.

We include a space for debt service for any mid- to long-term borrowing by The Bank.

Profit is the difference between expenses and income, which is primarily interest income. Non-interest income from fees and ancillary services will add to income, but are ignored in this exercise**.**

We estimate taxes at 15% of profit to obtain Total Profit, which can be divided between retained earnings and return of profit to the City.

Income on Assets

The Bank's financial assets comprise its capital and the reserves that accompanied City deposits. The Bank's loans are also assets invested in notes from the City.

The primary source of income for The Bank is interest on its loans. We have set this at 4%, because it is at the lower end of the range of interest rates the City now pays on its loans. Also, it gives us a reasonable 3% spread relative to the interest we pay to the City.

In addition, the Fed pays only 0.25% on our demand deposits at the Fed. So, we keep that balance low. The remaining assets are invested at about 1% in 2- to 5-year treasuries, which have no risk and can be readily converted to demand deposits when needed.

In Tables 3 and 4 there are a beginning balance sheet for the first year of operation beginning July 1, 2017 and the ending balance sheet for June 30, 2018 after a year of operation, alongside an income and expense statement. Although this format makes the page more complicated, this display shows where income is generated and where it goes. A line-by-line guide is located in the Resource Section. Bank balance sheets for years 2 through 5 are also located in this section.

The Loan Process

BTT undertook an exercise to determine whether current loans and bonds available for refinancing in 2017 by the City of Santa Fe, New Mexico (the year we propose opening a Public Bank for Santa Fe), could be restructured by The Bank to lower the City's debt service (principal**,** interest and fees associated with the loans), and also lower the City's total projected debt.

With the help of City staff we obtained information on four loans and six bonds that are available for refinancing and refunding in 2017. We used the loan and bond payment schedules to determine the amount of the payoff. Bond payoffs were calculated as instructed under the "Prior Redemption" Sections based upon the review of the Series 2010B and 2012B Bond Ordinances.

The first concern for the "New Loan" was to reduce debt service. The second was to reduce total City debt. The final goal was to find a rate and term that provided both, whenever possible. If that was not possible, the "New Loan" was created in favor of reducing debt service.

As a result of our exercise, we learned that, generally, extending term had a greater positive effect to meet the debt service reductions we were seeking. Therefore, we decided to keep all of the loans at 4%, which we believed would provide The Bank with the revenue required to cover costs, and in time, create a profit, i.e. revenue returned to the City.

As you will see, the results of our work show that by a careful restructuring of the loans and bonds into "New Loans", we were able to reduce annual debt service costs by $1,336,976 and reduce total City debt by $4,848,694 over a five-year period. Once we determined available loans and bonds could successfully be restructured, we created profitable portfolios for The Bank's first five years of operation.

Conclusions:

In the first year, the Public Bank will create a $50,000,000 Loan Portfolio based on $9,000,000 of core capital and $100,000,000 of City Deposits.

In that year, more than $45,000,000 of the new public bank loan portfolio will consist of loans made to the City with carefully restructured existing loans and bonds that were available to be called. We wanted a $50,000,000 loan portfolio for the first year, but recognized that because of the City's existing debt burden that it might not have the financial capacity to borrow more money that year.

The Bank seizes its first opportunity to partner with local financial institutions by adding $5,000,000 to lend into the community through local banks or credit unions to increase access to credit for Santa Feans for things like affordable housing, renewable energy and other small businesses.

In years three, four and five, because of positive cash flow and lower debt, the City will be able to once again borrow for needed projects at low interest rates and continue to restructure its existing debt with The Bank as existing debt becomes available for restructuring. We anticipate that A Public Bank for Santa Fe can make a modest profit that increases during each of its first five years of business based on our Hypothetical Balance Sheets and Income Statements.

Public Bank Five-Year Profit or Loss? Beginning and Ending Balances

Our study indicates that The Bank can make a small profit right from the first year. Over time The Bank's net profits will increase:

Year 1 **$ 513,889**

Year 2 **$ 838,934**

Year 3 **$1,427,926**

Year 4 **$2,993,419**

Year 5 **$4,669,039**

TABLE 1 **5-Year Bank Profit Calculations**

	Income	Expense	Profit before tax	Tax @ 15%	Net profit
Year 1	2,479,575	1,875,000	604,575	90,686	**513,889**
Year 2	2,875,069	1,897,500	977,569	146,635	**830,934**
Year 3	3,601,363	1,921,450	1,679,913	251,987	**1,427,926**
Year 4	5,468,648	1,946,979	3,521,669	528,250	**2,993,419**
Year 5	7,472,522	1,979,535	5,492,987	823,948	**4,669,039**
	1	2	3	4	5
Payroll	500	510	520.2	530.604	546.522
IT	30	30	30	30	30
Equip	In hypothetical we bought year-one equipment out of assets				
Rent	500	500	500	500	500
Loan Loss expense	125	137.5	151.25	166.375	183.013
Interest	720	720	720	720	720
Expense	1,875,000	1,897,500	1,921,450	1,946,979	1,979,535

TABLE 2

Hypothetical Balance Sheets -- Start 7/1/2017
Pubic Bank for Santa Fe per 2014 CAFR

Line	Assets	Amount	Interest Rate	Income + Expense -
1	Cash and due from other banks	$2,000,000	0%	
2	Federal funds sold & reverse repo			
3	Securities	$57,800,000	1%	
4	Loans	$50,000,000	4%	
5	Loan loss allowance	($125,000)		
6	Net loans	$49,875,000		
7	Trading account assets			
8	Bank premises, equipment & software	$200,000		
9	Other Assets			
10	**Total Assets**	$109,875,000		
	Liabilities and Equity			
11	**Liabilities**			
12	Demand deposits	$10,000,000		
13	Time deposits	$90,000,000	1%	
14	Federal funds purchased & repo			
15	Trading liabilities			
16	Other borrowed funds			
17	Other liabilities			
18			**Interest Income**	$0
19	**Equity**		**Non-int. Income**	
20	Stock (Tier 1 Capital)	$9,000,000	**Operating Expenses**	
21	Surplus (Tier 1)		Salaries & benefits	$500,000
22	Retained earnings (Tier 1)		IT support	$30,000
23	Undistributed income		Rents	$500,000
24	AOCI		Interest on deposits	$450,000
25	Start-up capital	$1,000,000	Loan loss expense	$0
26	Other	($125,000)	Debt service	
27	**Total Liabilities and Equity**	$109,875,000	Total operating	$1,480,000
28			Profit	
29			Taxes @ 15%	
30			Net Profit	
31			Retained earnings	
32			To City	

TABLE 3 **Hypothetical Balance and Income Sheets -- End 6/30/2018**
Public Bank for Santa Fe per 2014 CAFR

Line	Assets	Amount	Interest Rate	Income + Expense -
1	Cash and due from other banks	$2,000,000	.25%	$5,000
2	Federal funds sold & reverse repo			
3	Securities	$64,551,463	1%	$575,000
4	Loans	$44,482,426	4%	$1,899,575
5	Loan loss allowance	($125,000)		
6	Net loans	$44,357,426		
7	Trading account assets			
8	Bank premises, equipment & software	$200,000		
9	Other Assets			
10	**Total Assets**	$111,108,889		
	Liabilities and Equity			
11	**Liabilities**			
12	Demand deposits	$10,000,000		
13	Time deposits	$90,720,000	1%	See Interest on deposits below.
14	Federal funds purchased & repo			
15	Trading liabilities			
16	Other borrowed funds			
17	Other liabilities			
18			Interest Income	$2,479,575
19	**Equity**		Non-Int. Income	
20	Stock (Tier 1 Capital)	$9,000,000	**Operating Expenses**	
21	Surplus (Tier 1)		Salaries & benefits	$500,000
22	Retained earnings (Tier 1)	$513,889	IT support	$30,000
23	Undistributed income		Rents	$500,000
24	AOCI		Interest on deposits	$720,000
25	Start-up capital	$1,000,000	Loan loss expense	$125,000
26	Other	($125,000)	Debt service	
27	**Total Liabilities and Equity**	$111,108,889	Total operating	$1,875,000
28	**Regulatory Metrics**		**Profit**	$604,575
29	Common equity (Tier 1) / Risk-weighted assets > 10.5%	23.4%	Taxes @ 15%	$90,686
30	Common Equity (Tier 1) / Total assets > 4%	9.4%	Total Profit	$513,889
31	Debt to Equity = (Assets – Liability/Equity)	1.0	**Retained earnings**	**$513,889**
32			**To City**	**?**

Cash flow is the lifeblood of all businesses, especially start-ups and small enterprises. For example, it is anticipated that the City will make semiannual payments to The Bank; however, the staff must be paid every month. Therefore, it is essential that management predict what is going to happen to cash flow so the cash is available when needed.

TABLE 4 **Pubic Bank for Santa Fe** **2017 – 2021 Cash Flow Forecast**

	7/1/2017 - 6/30/2018	7/1/2018 - 6/30/2019	7/1/2019 - 6/30/2020	7/1/2020 - 6/30/2021	7/1/2021 - 6/30/2022
Opening Balance	-	404,575	977,569	1,699,913	3,542,569
Money In					
Core Capital	9,000,000				
Subtotal - Capital	***9,000,000***				
Shareholder Loan - Startup costs	1,000,000				
Interest - Loans	**1,899,575**	**1,890,494**	**2,043,794**	**3,189,635**	**3,348,623**
Interest - Reserves	-	-	-	-	-
Interest - Securities	580,000	580,000	580,000	580,000	580,000
Total Money In	***3,479,575***	***2,875,069***	***3,601,363***	**5,469,548**	**7,471,192**
Total Money In plus Capital	**12,479,575**				
Money Out					
Salaries and Benefits	500,000	510,000	520,200	530,604	546,522
IT Support	30,000	30,000	30,000	30,000	30,000
Equipment and Software	200,000				
Rent	500,000	500,000	500,000	500,000	500,000
Loan Losses	125,000	137,500	151,250	166,375	183,013
Interest on Time Deposits	720,000	720,000	700,000	700,000	700,000
Total Money Out	**2,075,000**	**1,897,500**	**1,901,450**	**1,926,979**	**1,959,535**
Total Money In minus Total Money Out	**1,404,575**	**977,569**	**1,699,913**	**3,542,569**	**5,511,657**
Shareholder Loan Repaid	1,000,000				
Closing Balance	**404,575**	**977,569**	**1,699,913**	**3,542,569**	**5,511,657**

Below are the projected five-year loan portfolio beginning and ending balance**s**. As prior loans are paid off the earlier portfolio is reduced, but the total loan portfolio may increase due to new loans issued. A copy of the worksheet that created these annual portfolios, based upon the bonds and loans available for refinancing as shown in Table 5, can be obtained electronically by contacting *TeamBrassTacks@gmail.com*.

TABLE 5 Five-Year Loan Portfolio Beginning and Ending Balance

	Beginning Loan Portfolio	New Loans	New Loan Portfolio	Principal Paid	Interest Earned	Ending Balance - Loan Portfolio
2017	50,000,000			5,517,574	1,899,575	44,482,426
2018	44,482,426	5,517,574	50,000,000	6,016,406	1,890,494	43,983,594
2019	43,983,594	16,350,251	60,333,845	9,068,935	2,043,794	51,264,910
2020	51,264,910	33,876,200	85,141,110	11,858,031	3,189,635	73,283,079
2021	73,283,079	16,716,921	90,000,000	13,811,131	3,348,623	76,188,869

RESOURCE Section

Available upon request from TeamBrassTacks@gmail.com

2017-2022 loan portfolios calculations

Line-by-Line GUIDE: The Public Bank First Year Beginning and Ending Balance Sheets

(Table 2 & 3 pages 9 & 10)

Line-by-Line GUIDE Beginning Balance Sheet Table 3 -- Start 7/1/2017

We will briefly describe the important lines of the balance sheet. Generically, balance sheets are very similar for any business. We will point out below how banks differ from ordinary businesses. In all cases, the general accounting formula must hold.

> Assets = Liabilities + Equity

Line 1. Cash and due from other banks: Accounts for cash on hand and deposits at the Fed. In addition, The Bank can have accounts at other banks.

Line 3. Securities: These assets are invested federal reserves that were obtained when the City deposited its money in The Bank. Also included is the invested capital Lines 20 and 25.

> Note: When the City withdrew the loan, $50 million of reserves transferred from The Bank to another bank or banks through the Fed payments system.
>
> Rather than borrow some of the $50 million, we elected on behalf of the manager, to take the $50 million from existing assets, which left $58 million (Line 3) plus the $2 million (Line 1) to cover withdrawals from demand deposits. Should the City decide to draw down its time deposits, the manager will have time to consider the matter and borrow (Line 16 or Line 14) if needed. Finally, we cashed out $200,000 to buy equipment (Line 8) leaving $57.8 million.

Line 4. Loans: Outstanding loan balance is the main income-generating asset.

Line 5: Loan loss allowance: Required by both prudence and bank examiners, this is an estimate of losses due to underperforming loans or defaults. This amount reduces our expected return on loans. Fortunately, loans to the City are considered very safe and we can keep this amount small.

The amount here is determined by bank management upon review of the total loan portfolio. As shown in Line 26, this amount has a direct impact on equity.

Line 6. Loans net of allowance: This is the amount management actually expects to turn to cash.

Line 8. Bank premises, equipment & software: Accounts for investment in tangible assets.

Lines 12. Demand deposits: This (checking account) liability is the account against which federal reserves are held. For this small amount, no reserves are required. The Bank pays little or no interest on this balance.

Line 13. Time deposits: The depositor must give notice before withdrawing these deposits and is rewarded with interest payments. This gives the manager time to rearrange assets to accommodate the withdrawal.

Line-by-Line GUIDE Ending Balance Sheet -- End 6/30/2018

This page shows the results of allocating The Bank's assets and liabilities during the first year of operation. Making these allocations is where a clever compliance manager earns her salary as this operation affects bank profitability. In contrast to an annual, static balance sheet, every day offers problems and opportunities to the manager.

Because we are working the case for the worst-case scenario of immediate withdrawal of funds from the City's account, our manager has an immediate and significant challenge. She must decide how much of The Bank's assets to invest and which securities to buy. The balance between income and risk is always on her mind.

Line 1. Cash and due from other banks: On behalf of our manager we retained $2 million of the original $110 million on this line. Currently, the Fed pays 0.25% interest on reserves held at the Fed. Cash on hand earns no interest, but we anticipate that The Bank will have little use for cash.

Line 2. Federal funds sold & reverse repo: When The Bank has end-of-day excess reserves, on occasion it can lend them to other banks in the overnight federal funds market. At the end of the year there might be an entry on this line. It is the opposite of Line 14.

Line 14. Federal funds purchased & repo: When a bank needs more reserves it can borrow on the overnight Fed funds market at low rates from banks that have excess reserves. These loans are not collateralized and are short term, usually less than a week, most often for one day.

If time deposits are drawn down significantly, The Bank will need to sell securities or borrow to meet the need for reserves.

> Note: A repurchase agreement (repo) is a manner of borrowing in which a bank sells a security with the agreement that the buyer will sell it back for the same price plus interest at a later date, which is within a few days and usually the next day.
>
> Repos and reverse repos are collateralized and are used primarily by big banks involving large sums. Reserves can also be borrowed from the Fed's discount window at a much higher interest rate. Such borrowing also requires collateral and is short term.

Line 3. Securities: We assumed a mixture of 2-Year and 5-Year Treasuries with an average yield of 1%. That income is shown to the right.

There are other safe, higher yielding securities that the manager might have chosen.

Line 4. Loans: This amount has been reduced as principal payments have been collected over the year. The value has been taken from the amortization schedule for the loan.

Line 5. Loan loss allowance: This is based on the loan amount going into the next year. In this exercise we have not assumed additional loans at year end. Hopefully, there will be more tomorrow - July 1.

Line 6. Loans net of allowance: This is the amount we consider to be our net loan asset. Unless new loans are made, The Bank's income will be considerably less in the following year.

Line 12. Demand deposits: We assume that the City restored this amount back to $10 million by the end of the year.

Line 13. Time deposits: Semiannual loan payments are made from this account. But, increased deposits make up the difference.

Line 7. Trading account assets: and **Line 15. Trading liabilities:** These entries account for gains and losses respectively in security trading. For private banks, this is where risks are taken with the bank's own money. However, The Bank's money is the people's money, so these entries may well remain blank.

Line 22. Retained earnings: This is The Bank's share of profits retained.

Regulatory Metrics

After the financial crisis of 2008, the Bank of International Settlements (BIS) in Basel, Switzerland set out more restrictive regulations for banks, which our Fed has adopted. The BIS is a bank for national central banks and is given authority for such regulatory pronouncements.

In the lower left hand box on the balance sheet we tabulated some regulatory metrics that are contained in recent Basel III regulations. Our scenario appears well within regulations. The regulations are much more complex than these simple ratios would suggest, and compliance with them will be a significant overhead burden for The Bank.

City of Santa Fe Debt Available for Refinancing in 2017 and 2020 by The Bank

TABLE 6 **TOTAL BONDS AND LOANS AVAILABLE FOR REFINANCING**

CHART No.	SERIES No.	Project	Call Date	Current Loan - Years Remain-ing	Current Annual Payment - Principal, Interest & Fees	EXISTING Principal, Interest & Fees to be Refinanced	Public Bank Loans "Public Bank Refinancing Loan Information"				
							RATE	TERM	Annual Payment - Principal & Interest	Outstndng Balance- Total Principal & Interest	Reduction (Increase) in Total City Debt
1	2005	Muni Rec complex Refund-ing	2017	8	1,317,113	6,106,100	4	5	1,211,497	6,057,486	48,614
2	Loan	Railyard I	2017	8	52,828	369,944	4	8	45,467	363,732	6,212
3	2006B	GRT Bond Refund-Ing	2017	7	1,308,060	7,844,025	4	7	1,120,546	7,843,824	201
4	Loan	Railyard II	2017	10	85,178	766,984	4	13	58,936	766,171	813
5	2006C	Waste water	2017	5	938,250	3,756,250	4	5	758,383	3,791,916	(35,666)
6	2006D	Water	2017	9	4,373,594	34,493,625	4	9	3,824,609	34,421,480	72,145
7	2008	GO Park Bonds	2020	8	1,556,408	12,436,944	4	8	1,567,400	12,539,200	(102,256)
8	2008	GRT-CIP	2019	4	3,369,138	15,387,238	4	5	3,162,390	15,811,950	(424,712)
9	Loan	College of SF	2020	17	2,220,923	35,564,985	4	14	2,163,225	30,285,144	5,279,841
10	Loan	Land Acquisitio n	2019	10	275,868	2,482,812	4	10	247,931	2,479,310	3,502
Totals					15,497,360	119,208,907			14,160,384	**114,360,213**	4,848,694
						Lowers City's Annual Debt Service			**1,336,976**		
						Lowers City's Total Debt					**4,848,694**

TABLE 6 **TOTAL BONDS AND LOANS AVAILABLE FOR REFINANCING**

CHART No.	SERIES No.	Project	Call Date	Current Loan Years Remain-ing	Current Annual Payment - Principal, Interest & Fees	Existing Principal, Interest & Fees to be Refinanced	Public Bank Loans "Public Bank Refinancing Information for 2017 Loans"				
							RATE	TERM	Annual Payment - Principal & Interest	Outstndng Balance- Total Principal & Interest	Reduction (Increase) in Total City Debt
1	2005	Muni Rec complex Refunding	2017	8	1,317,113	6,106,100	4	5	1,211,497	6,057,486	48,614
2	Loan	Railyard I	2017	8	52,828	369,944	4	8	45,467	363,732	6,212
3	2006B	GRT Bond Refunding	2017	7	1,308,060	7,844,025	4	7	1,120,546	7,843,824	201
4	Loan	Railyard II	2017	10	85,179	766,984	4	13	58,936	766,171	813
5	2006C	Wastewater	2017	5	938,250	3,756,250	4	5	758,383	3,791,916	(35,666)
6	2006D	Water	2017	9	4,373,594	34,493,625	4	9	3,824,609	34,421,480	72,145
				Subtotal	8,075,024	53,336,928			7,019,438	53,244,609	92,319
					For 2017, *Lowers City's Annual Debt Service*				**1,055,586**		
						Lowers City's Total Debt					**92,319**

TABLE 6 TOTAL BONDS AND LOANS AVAILABLE FOR REFINANCING

CHART No.	SERIES No.	Project	CALL DATE	Current Loan - Years Remaining	Current Annual Payment - Principal, Interest & Fees	EXISTING Principal, Interest & Fees to be Refinanced	Public Bank Loans "Public Bank Refinancing Information for 2019 and 2020 Loans"				
							RATE	TERM	Annual Payment - Principal & Interest	Outstndng Balance- Total Principal & Interest	Reduction (Increase) in Total City Debt
8	2008	GRT-CIP	2019	4	3,369,138	15,387,238	4	5	3,162,390	15,811,950	(424,712)
10	Loan	Land Acquisition	2019	10	275,868	2,482,812	4	10	247,931	2,479,310	3,502
					3,645,006	17,870,050			3,410,321	18,291,260	(421,210)
					For 2019, *Lowers City's Annual Debt Service*				**234,685**		
						Increases City's Total Debt					**(421,210)**
7	2008	GO Park Bonds	2020	8	1,556,408	12,436,944	4	8	1,567,400	12,539,200	(102,256)
9	Loan	College of SF	2020	17	2,220,923	35,564,985	4	14	2,163,225	30,285,144	5,279,841
					3,777,331	48,001,929			3,730,625	42,824,344	5,177,585
					For 2020, *Lowers City's Annual Debt Service*				**46,706**		
						Lowers City's Total Debt					**5,177,585**

Appendix 5

Public Bank Update Prepared by the Finance Department of the City, dated June 5, 2017

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 06/05/17
FOR CITY COUNCIL MEETING OF 06/14/17

ISSUE:

18. Public Bank Update. (Adam Johnson)

FINANCE COMMITTEE ACTION:

Approved as discussion item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR VILLARREAL	X		
COUNCILOR IVES	X		
COUNCILOR LINDELL	X		
COUNCILOR HARRIS	X		
CHAIRPERSON DOMINGUEZ			

4-13-17

City of Santa Fe New Mexico
Finance Department
Memorandum

DATE: June 5, 2017

TO: Finance Committee

FROM: Adam Johnson, Finance Director
Christina Keyes, Treasury Officer
Bradley Fluetsch, CFA, Cash and Investment Officer

RE: Treasury Management and Investment Practices Update

Background:
The Public Bank Feasibility Study identified areas of the City's financial management policies and practices that were not performing optimally. The study characterized these opportunities as Phase I of creating a City Banking Function. For the purposes of this report, the creation of the Treasury Division is synonymous with Phase I of the City Banking Function. The Division was created by one simple re-classification and separating the asset custody from the record-keeping operations of the Finance Department. The cost of the re-organization was de minimis while the financial and non-financial gains have been demonstrative.

The actions taken by the Executive Financial Staff did not occur as a result of the feasibility study. Rather, this group identified the similar areas for improvement and took immediate actions to address. The areas identified by the Public Bank Feasibility Study include the following:

- Update the City's collateral policy
- Optimize investment returns while maintaining liquidity and safety
- Utilize available fund balances to pay off expensive debt obligations and/or finance capital projects.

The Finance Department has accomplished all of the aforementioned recommendations.

Finance Department Expansions:
In Fiscal Year 2017, the Finance Department adopted a new direction to pursue best practices for municipalities and implement efficiencies. To support this focus, the Treasury Division was established, staffed with two new hires. Christina Keyes was hired in September 2016 for the newly created position, Treasury Officer. Bradley Fluetsch, CFA was also hired in September 2016 as Cash and Investment Officer. Both new employees bring significant education, training and Treasury and investment management experience to the Finance Department. With their knowledge and experience, industry best policies, practices and procedures are being implemented in the management of the City's cash and investments. These two new hires bring expertise and experience that the City of Santa Fe has not had on staff previously.

City of Santa Fe New Mexico
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Investment Policy Update:
Since the creation of the Treasury Division, the Investment Policy has been significantly revised and subsequently adopted by the City Council in December 2016. The revisions to the policy brought it into greater alignment with New Mexico Statutes and regulations.
Two specific changes:

- Collateral for checking, savings and CDs was changed from an across the board 102 percent of funds on greater than the FDIC insured, to levels specified by New Mexico State Treasurer's Office, quarterly collateral requirements. By changing the collateralization requirements it will allow highly rated local banks to lend a portion of City of Santa Fe deposits into the local economy, where previously they were not able to.

- Inclusion of Statute 6-10-10 (G); which states communities in Class A counties and a population greater than 65,000 in the last decennial US census can invest in investment pools with more than $100 million in assets that include Corporate Bonds, Commercial Paper and other non-US Treasury or Agency securities. By incorporating this statute into the investment policy, staff was able to substantially increase the rate of return on the City's most liquid investments, money market funds. The increase in return can be attributed to increasing credit risk without changing the interest rate risk in the portfolio.

The new investment policy also calls for Treasury staff to analyze and select a total return benchmark against which to compare investment performance. In the past, investment performance was not measured against a total return benchmark. The portfolio yield was compared against the constant maturity of one and two year US Treasuries. Changing portfolio performance measurement from a yield comparison to a total return comparison insures that the City's investments are maximizing returns while still providing safety and liquidity. This is a new level of investment reporting and performance measurement that the City has never had.

Internal Investment Management:
Cash and investment management has been elevated to a more important role within the Finance Department, where previously only the Cash and Investment Officer was involved in the day to day activities of the portfolio. Now, the Finance Director, Treasury Officer and the Cash and Investment Officer are involved in the active management of the portfolio. As such, First Southwest Asset Management, investment advisor was terminated March 31, 2017. Subsequently, the management of the investment portfolio has been moved in-house for a savings of $48,000 per year.

The three Finance Officers meet regularly to discuss the economy and review the internally developed investment strategy for the portfolio, taking into account liquidity needs, market risks and opportunities. The Bank Feasibility study discussed liquidity management in detail. The new approach to managing the City's cash, liquidity should be considered in two contexts. First, how much does the City need to pay its bills on a monthly basis and second, how much is placed in short-term investments. Once the first question is answered, the second question is an investment strategy question. As an example, today the fixed income market is pricing in two rate hikes by the Federal Reserve over the next 18 months. The Federal Reserve has told the market to expect five rate hikes over the next 18 months. There are many reasons the market has not priced in the Federal Reserve's statements, namely they have different expectations of future economic and market performance. Currently, it is staff's belief that the market should have more rate hikes priced in, therefore, we are keeping the duration of the portfolio shorter than we would otherwise and a higher balance in liquid, overnight investments. When the markets price in what the Federal Reserve announces, staff will extend maturities and lower the portfolio's liquidity.

Investment Portfolio Improvements:
The Finance Staff implemented various investment updates and best practices to the investment portfolio during the first four months of assuming their new positions. Adjustments to the portfolio were made to improve investment performance while maintaining optimal liquidity for the City's needs. Changes included:

- Transferring funds from two large savings accounts, approximately $56 million in total from Wells Fargo and First National Bank of Santa Fe, into the Wells Fargo Trust Account.

- Transferring $5.7 million from the New Mexico LGIP account to the Wells Fargo Trust Account.

- Applied New Mexico Statute 6-10-36, which states the rate of interest paid by a local depository must be equal or greater than the equivalent US Treasury of the same maturity.

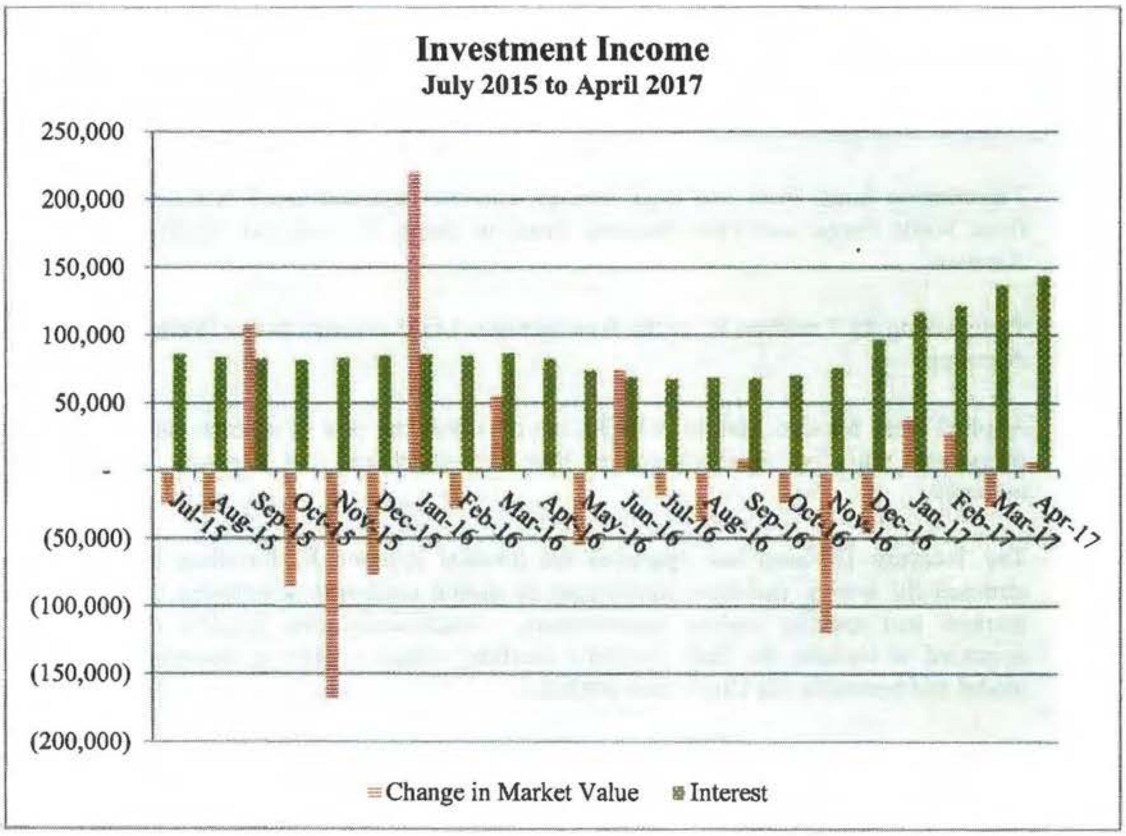
- The Treasury Division has upgraded the internal systems by installing a Bloomberg terminal for active, real-time monitoring of global economic conditions, fixed income markets and specific trading opportunities. Additionally, the SymPro software was upgraded to include the Debt Portfolio module, which is used to document, monitor, model and reconcile the City's debt portfolio.

City of Santa Fe New Mexico

Finance Department

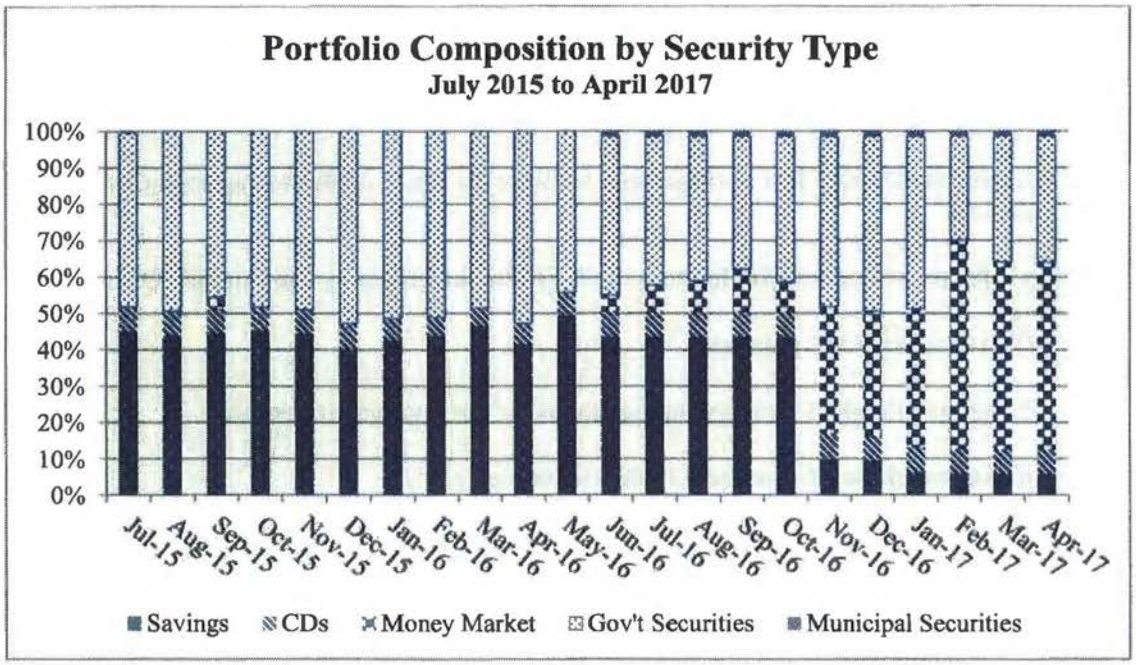
Memorandum

Investment Performance Growth:
The green dotted bars depict interest income of the total portfolio. There was a substantial increase in interest rates beginning in December 2016. This was the first month all of the funds in savings accounts were moved to a Government Money Market investment fund. In January 2017, another substantial increase occurred, attributed to moving funds from Government Money Market Funds to Prime Money Market funds. The sale of low yielding bonds in February and the reinvestment of the proceeds into the Prime Funds provided the increase in March's income. Staff actively monitors and manages the portfolio to insure maximum return within the safety guidelines.



The following chart presents the composition of the investment portfolio and how it has changed since the City's Treasury Department was created. The most significant change to the portfolio was the substantial reduction in the use of savings accounts and the increase in Money Market funds.

City of Santa Fe New Mexico
Finance Department
Memorandum



Debt Management Improvements:
In regards to debt management, the Bank Feasibility study pointed out that bond proceeds were not expended in a timely fashion. Prior to the Bank Feasibility study, the City adopted a new CIP budgeting process. The new CIP budget process is a five year plan for CIP, where projects are prioritized. This new process allows for better planning of bond issuance and provides the necessary lead times to plan, develop, and engineer projects allowing bond proceeds are expended in a timely manner.

The Finance Officers are taking a new look at debt management and issuance practices. The debt policy was found broadly lacking and a new one is being developed by staff, in consultation with the City's Municipal Advisor and Bond Counsel. The new debt policy will include a section for internal loans that are aligned with the investment policy as far as concentration percentage of the total portfolio and time to maturity.

Specific actions taken by staff to improve the City's Debt Management:

- Reformed the CIP budget process.
- Defeased the 2008 General Obligation and paid off two NMFA Railyard Loans with an internal loan.
- Refinanced the 2012C Tax Exempt Bond with a taxable bond, subsequently improving the marketability of the Market Station condominium.

- Held a debt conference with Bond Counsel, Municipal Advisor and senior Finance Department staff to strategize utilization of bond proceeds and bonding capacity over the next five, 10 and 20 years.

- Implemented new debt management software to assist in the management of existing debt.

The City's future endeavors will include the following activities by the Finance Officers:

- Optimization of CD purchases.

- Expanding the short term investment section of the investment portfolio.

- Expanding the local placement of debt instruments.

- Continued implementation of investment and Treasury best practices for municipalities.

- Greater alignment of the City's use of debt to meet strategic goals and achieve quality of life ambitions.

- Implement a benchmarking and performance analytics process.

- Consideration of a reserve fund for softening economic swings.

- Optimization of the Fixed Income Asset Allocation.

- Pursue public outreach efforts for Continuing Financial Education within the community.

Conclusion:
This informational memo provides an overview of financial and investment activities over the last eight months. The Finance Officers at the City of Santa Fe assumed their positions bringing to the Department professional skills to achieve strong efficiencies and improved investment returns. The staff identified many opportunities for improvement, some of which were also noted in the Public Bank feasibility study. Over this brief period, staff has accomplished all of these items and more. The small business lending suggestion would be best served by various established local banking institutions. The City stands ready to provide funds to these institutions via a targeted CD program to help meet the loan demand of the local banking community.

Appendix 6

A Memorandum dated August 24, 2017, Regarding Legal Issues and Matters for further, Research and Examination Regarding Proposed Public Bank of Santa Fe prepared by legal counsel to the Financial Institutions Division

New Mexico Regulation and Licensing Department
FINANCIAL INSTITUTIONS DIVISION
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Susana Martinez
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Financial Institutions Division
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Securities Division
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Administrative Services Division
(505) 476-4800

MEMORANDUM

RE: **Legal Issues and Matters for Further Research and Examination Regarding Proposed Public Bank of Santa Fe**

DATE: **August 24, 2017**

The content of this memo includes legal and regulatory issues and concerns identified by Kevin A. Graham, legal counsel for the Financial Institutions Division (FID), following his initial review in the Spring of 2016 of the "Public Banking Feasibility Study Final Report for the City of Santa Fe" produced by Katherine L. Updike and Christopher Erickson, January, 2016, as well as issues raised by the FID when considering memorial legislation which had been proposed to the New Mexico Legislature in 2017 regarding the potential for a publicly owned bank in the State of New Mexico. This memorandum should not be interpreted as a full or complete legal review of the numerous legal issues related to the establishment of a publicly owned bank in the State of New Mexico. The following subject areas of legal concern should be considered a starting point for a comprehensive legal review and assessment to be completed prior to further development of any proposal for the establishment of a publicly owned/operated bank in our State.

I. APPARENT CONFLICT WITH EXISTING NEW MEXICO LAW:

The Establishment of a Government Owned "Bank" in the State of New Mexico Appears to be a Direct Violation of the Terms of the Anti-Donation Clause of the New Mexico Constitution, Article IX, Sect. 14.

1.. The formation of a "bank" being owned/run by any unit of government within the State of New Mexico using public funds to finance the "bank" appears to be in direct conflict with the language and intent of Article IX, Sect. 14 of the New Mexico State Constitution (commonly known as the "Anti-Donation Clause.")

2. The "Anti-Donation Clause" reads as follows:

> "Sec. 14. [Aid to private enterprise; veterans' scholarship program; student loans; job opportunities.]
>
> Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person,

association or public or private corporation or in aid of any private enterprise for the construction of any railroad; except as provided in Subsections A through G of this section.

A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;

B. Nothing in this section prohibits the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States;

C. The state may establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law.

D. Nothing in this section shall be construed to prohibit the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law. (As amended November 1, 1971, November 5, 1974, November 8, 1994, November 5, 2002, November 7, 2006 and November 2, 2010.)"

3. Due to the fact that this provision of New Mexico law is part of the State Constitution, in order to make any alteration or change to the wording of the

clause would require the passage of a State constitutional amendment – which entails a process significantly more involved than amending a state statute or regulatory provision.

4. Subsection (D) of Article IX, Sect. 14 does allow the state (or county or municipality) to work to create "new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses..." Even if the term "infrastructure" in that provision were to be very broadly interpreted to include allowing a municipality to directly loan money to a private enterprise to create "new job opportunities," there would still be the hurdle in place requiring implementation legislation to be approved by both houses of the State legislature before such a highly restricted "bank-type" entity could be approved (a "bank" created under this stretched definition of "infrastructure" would presumably only be able to make loans to entities that would create "new job opportunities").

5. Phase Two of the "Strawman" section of the Feasibility Study directly calls for the City of Santa Fe to apply for a State Bank Charter.

   (a) The City of Santa Fe is a "municipality" under the terms of Article IX, Sect. 14.

   (b) The funding for the operation of the "Santa Fe Bank" would come from the city (and possibly later from investments from other governmental entities) which would reasonably be interpreted as involving the "credit" and resources of the City of Santa Fe (and any other government entities who might deposit money in the proposed bank.)

   (c) In order to make loans or conduct other "bank" business as described in the Feasibility Study, the proposed bank would necessarily use municipal funds to "directly or indirectly lend or pledge [the city's] credit or make any donation to or in aid of any person, association or public or private corporation." Thus, without a specific amendment first being made to Article IX, Sect. 14, the proposed activities to be undertaken by the "Santa Fe Bank" would be in direct violation of the Anti-Donation Clause of the New Mexico Constitution.

   (d) In light of this constitutional barrier to the operation of the proposed bank, the Director of the FID would not be able to issue a permit to the proposed bank to file with the Corporation Commission (§58-1-58, NMSA 1978) nor could the Director of the FID issue a certificate of authority to the bank to begin operation (§58-1-61, NMSA 1978).

      (1) §58-1-58. Determination on application for permission to file with the corporation commission [public regulation commission]

         A. When an application for permission to file with the corporation commission [public regulation commission] has been delivered to the commissioner [director of the financial institutions division of the regulation and licensing department], he shall make or cause to be made a careful investigation and examination relative to:

(1) the character, reputation and financial standing of the organizers or incorporators;

(2) the character, financial responsibility of proposed directors and banking or trust experience, and business qualifications of those proposed as officers;

(3) the ability of the community to support the proposed bank, giving consideration to:

(a) the services offered by existing banks and other financial institutions;

(b) the banking history of the community; and

(c) the opportunities for profitable employment of bank funds as indicated by the demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the community, with particular regard to their stability, diversification and size;

(4) whether or not the full amount of the authorized capital structure has been subscribed;

(5) whether or not the proposed capital structure is adequate in the light of current and prospective banking conditions;

(6) whether or not the name of the proposed bank resembles so closely, as to be likely to cause confusion, the name of any other banks transacting business in this state; and

(7) such other facts and circumstances bearing on the proposed bank and its relation to the community as in the opinion of the commissioner [director] may be relevant.

(2) §58-1-61. Certificate of authority.

A. A request for a certificate of authority shall be made to the commissioner [director of the financial institutions division of the regulation and licensing department] after he has approved the application to file the articles of incorporation with the corporation commission [public regulation commission] and all requirements have been met. The request shall contain:

(1) the address at which the bank will operate;

(2) a statement that all of the bylaws adopted have been attached as an exhibit to the request;

(3) a statement that the full amount of the authorized capital structure has been paid to the escrow agent;

(4) the signed oaths of the directors; and

(5) such other information as the commissioner [director of the financial institutions division] may require to enable him to determine whether a certificate of authority should be issued.

B. The commissioner [director] shall approve the request for a certificate of authority within twenty days after the request has been accepted by him and he has been satisfied that all requirements have been complied with and he shall issue a certificate of authority for the bank to transact business. Before actually transacting any banking business or accepting any deposits, the applicant must file with the commissioner [director] satisfactory proof showing that insurance of deposits has been obtained through the federal deposit insurance corporation or other appropriate agency or instrumentality of the United States government.

II. REQUIRED INDEPENDENCE OF A BANK BOARD OF DIRECTORS

The Requirement of a Truly Independent Board of Directors (and Bank Officers) Does Not Appear to have Been Fully Considered; Authority of the Board Over Time; Potential for Conflict with City Council.

1. The Feasibility Study only gives very brief attention to the fact that the model to be utilized by the bank (conventional equity model or mutual bank model) will depend "upon ongoing investigation with State regulators and legal counsel." The Feasibility Study acknowledges that "[a]ny bank charter application will require a substantial and complete description of the governance mechanisms of a new bank. At a minimum, a Board will need to be described (and later appointed) which insulates the Bank from election cycles." The Feasibility Study summarily concludes its analysis of this subject with the statement: "The Board's most important function is that of selecting a CEO to run the bank. It is also relatively common for the Board to have one or more subcommittees that focus on operational policy, such as loans, audits or investments."

2. New Mexico law places specific duties and responsibilities on members of Boards of state chartered banks, which may be generally summarized as a duty to work for the "best interests of the bank."

(a) §58-5-1, NMSA 1978 requires members of a Board of Directors for a State chartered bank to take an oath pledging to "diligently and honestly administer the affairs of the bank. . ."

(b) §58-1-65 (A), NMSA 1978 "[t]he affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties."

(c) §58-1-66, NMSA 1978. Directors; meetings and duties. This statute provides requirements for meetings of a Board of Directors as well as the multiple subject areas related to bank business that must be examined, approved and reported on by board members at those meetings.

3. Potential for Situation Where the Board of Directors of the Proposed Bank and the City Council of the City of Santa Fe Develop a Conflict Over the Operation of the Bank.

(a) The Feasibility Study does not appear to fully address the potential for a situation where the elected Board of Directors of the proposed Santa Fe Bank and the elected City Council of the City of Santa Fe may reach a future situation where the Board would make a decision(s) in regards to lending, interest rates, bank operations, etc., that the City Council does not support. Likewise, a situation could develop where the City Council would make a request of the bank/board to support a particular project or make a particular loan and the Board declines the request on a determination the project or loan is not in the best interest of the Santa Fe Bank.

(b) In either such hypothetical situation, the City Council could react to the disagreement/denial by taking action to withdraw its funds from the bank (just like any other bank customer.)

(c) The funding structure of the proposed Santa Fe Bank appears to be based heavily on funding from the City of Santa Fe; thus a sudden reduction of funding by the City of Santa Fe could result in immediate jeopardy to the financial security of the bank.

(d) While the current Santa Fe City Council may be completely supportive of the idea/operation of a Santa Fe Bank, there is no guarantee that any future city council (following an election cycle, or even just a change in opinion of a majority of city council members) would continue to deposit City funds with the bank.

III. <u>OPEN MEETINGS / OPEN RECORDS:</u>

Interplay of the New Mexico Open Meetings Act, §10-15-1, NMSA 1978, and the New Mexico Inspection of Public Records Act, §14-2-1, NMSA 1978, with the Operation of a Public Bank.

1. The interplay of the Open Meetings Act and the Inspection of Public Records Act with the creation of a new bank "owned" by a government entity does not appear to have been fully considered under the Feasibility Study.

2. Consideration should be given to the idea that a government-owned bank would potentially be required to "open" the meetings of its Board as well as "open" the records of the bank beyond the requirements placed on privately held institutions. Such requirements may have an impact on the bank's ability to be competitive in the industry.

IV. <u>ADDITIONAL CONCERNS REGARDING BANK OPERATIONS, SECURITY, STABILITY AND MANAGEMENT</u>:

1. How would a "public bank" in New Mexico be insured? All New Mexico state chartered banks are required to be insured:

(a) §58-1-2 NMSA 1978, (A) "bank" means: (1) an "insured bank" as defined in Section 3(h) of the Federal Deposit Insurance Act.

(b) §58-1-61 NMSA 1978 "(B) Before actually transacting any banking business or accepting any deposits, the applicant must file with the commissioner [director] satisfactory proof showing that insurance of deposits has been obtained through the federal deposit insurance corporation or other appropriate agency or instrumentality of the United States government.

(c) §58-1-70. Deposit insurance; membership in the Federal Reserve System. "A state bank shall obtain insurance of its deposits by the United States or any agency thereof, and may acquire and hold membership in the Federal Reserve System."

2. What protections would exist for deposits?

(a) Most banks are funded substantially through deposits. The state needs to consider the source of protection for those deposits. Traditional banks rely on deposit insurance coverage, subject to certain limits, from the Federal Deposit Insurance Corporation (FDIC).

(b) The Bank of North Dakota is frequently cited as the example of how a publicly owned bank could be organized and operated. Deposits of the Bank of North Dakota are not insured by the Federal Deposit Insurance Corporation (FDIC) insured, but are guaranteed by the full faith and credit of the State of North Dakota.

(c) In the FDIC's Statement of Policy for Applications for Deposit Insurance, the FDIC expresses its concern about institutions owned by domestic governmental units being controlled by the political process. Additionally, the FDIC notes, the institutions could raise special concerns relating to management stability, and the ability and willingness to raise capital. While not a definitive rejection of granting deposit insurance, the FDIC makes clear their concerns.

(d) As a condition of receiving a state bank charter in the State of New Mexico, the FID requires every applicant bank have in place insurance guaranteed by the FDIC or some other "appropriate agency or instrumentality of the United States government." (See §58-1-61 NMSA 1978, above.) As noted, a publicly owned bank may not be able to obtain this required, United States government backed, insurance.

3. What oversight would exist for the proposed publicly owned bank?

(a) U.S. banks are actively supervised by chartering authorities, including the FID, the FDIC, the Federal Reserve, and/or the Office of the Comptroller of the Currency (OCC). The state needs to determine the appropriate entity to conduct this oversight. In order to be effective, the regulator should be able to exercise its supervisory authority independently and must have the authority to review all books and records.

(b) An independent regulator must also have the tools necessary to seek corrective measures through formal enforcement actions, civil money penalties, and removal of bank officers and directors. These authorities are critical to ensuring public confidence and protecting the state's taxpayers who will ultimately need to cover any shortfall in the event of insolvency.

4. Safety and soundness of the bank.

(a) Primary objectives of regulators should always be the safety & soundness of financial institutions, compliance with laws, regulations, and supervisory policy. This includes, but is not limited to:

(1) Careful consideration should be given to the investment and lending authority of a state-owned bank in order to avoid risks to the solvency of the institution and prevent undue competition with privately owned banks. Appropriate limitations should be established on loans to insiders and affiliated entities. There should also be limitations established on loans to one borrower or group of affiliated borrowers.

(2) When the government owns the banks, lending decisions could become increasingly driven by politics, rather than economics. Resources flow to those with influence. Government-owned banks may also tend to under-price risk in order to gain votes. If there is one lesson we should take away from the recent crisis, it is that when you under-price risk, bad things happen.

5. Governance and managerial factors.

(a) Governance and managerial factors take into account the fiduciary duties of the board and management of the financial institution as well as the competence, experience, integrity, and financial ability of the institution's organizers and staff.

(b) Corporate governance is a critical component for all banks. Ultimately, the board sets the policies of the bank, determines the desired risk profile, and oversees management. The state needs to carefully consider the individuals who would be charged with this responsibility and their role, if any, in state government.

(c) One of the most important decisions for any financial institution is selecting the executive management team, since there is a direct relationship between the overall conditions of a bank, the quality of its management team, and the future performance of the bank.

6. Financial factors.

The Bank of North Dakota is currently the only state-run and state-owned American bank. The Bank of North Dakota is generally considered a well-run institution. In the past, many have contended the Bank of North Dakota provided a massive subsidy to the fossil fuel industry in North Dakota. Reviews of past annual reports for the Bank of North Dakota show the bulk of the bank's below-market lending was to the fossil fuel industry. Obviously, a significant downturn in the fossil fuel industry could present a significant challenge to the stability of a bank that has heavily engaged in lending to that industry. This situation with the Bank of North Dakota is referenced as an example of a point of concern for any publicly owned bank which would be intended/directed by the public authority to have an emphasis or focus on the development of local industry/business.

7. Capital adequacy.

Banks need to be supported by monetary capital. Capital provides the foundation for the bank to operate through the economic cycle. Banks generally add to capital during economically prosperous times and exhaust capital during periods of economic stress and unexpected losses. This countercyclical nature of capital is customary and desirable for privately-owned institutions. The state will need to determine the source of this capital, recognizing the need for it to remain in the bank throughout its existence. Capital should be sufficient at inception to support anticipated start-up costs and expected growth. In addition, the state should make a provision for contingent capital should the bank experience unexpected losses, requiring recapitalization. Federal regulations require Tier 1 Leverage Capital to be greater than 5.75% (and this number is expected to grow in coming years) for a bank to be considered “well capitalized.” The term, “well capitalized,” refers to a category under Prompt Corrective Action. Banks with capital below this category are subject to certain mandated regulatory restrictions. Banks generally find it necessary and desirable to hold significantly higher levels. The current industry average is just below 11%. By this standard, a bank projected to be $1 billion in assets, would need $110 million in capital, just to open its doors.

Appendix 7

Federal Reserve System Application to Register as a Bank Holding Company

Board of Governors of the Federal Reserve System

Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company—FR Y-3

____
Corporate Title of Applicant

____
Street Address

______________ ________ __________
City State Zip Code

____
(Type of organization, such as corporation, partnership, business trust, association, or trust)

Hereby applies to the Board pursuant to:

☐ (1) Section 3(a)(1) of the Bank Holding Company Act of 1956, as amended, ("BHC Act"—12 U.S.C. §1842), under "Procedures for other bank acquisition proposals" as described in section 225.15 of Regulation Y;

☐ (2) Section 3(a)(3) of the BHC Act, under "Procedures for other bank acquisition proposals" as described in section 225.15 of Regulation Y; or

☐ (3) Section 3(a)(5) of the BHC Act, under "Procedures for other bank acquisition proposals" as described in section 225.15 of Regulation Y.

for prior approval of the acquisition of direct or indirect ownership, control, or power to vote at least __________ (______ %) of a class of voting shares or otherwise to control:
Number Percent

____
Corporate Title of Bank or Bank Holding Company

____
Street Address

______________ ________ __________
City State Zip Code

Does applicant request confidential treatment for any portion of this submission?

☐ Yes

☐ As required by the General Instructions, a letter justifying the request for confidential treatment is included.

☐ The information for which confidential treatment is being sought is separately bound and labeled "Confidential."

☐ No

Public reporting burden for this collection of information for applications filed pursuant to section 3(a)(1) of the BHC Act are estimated to average 53 hours per response while applications filed pursuant to section 3(a)(3) or section 3(a)(5) of the BHC Act are estimated to average 63.5 hours per response, including the time to gather and maintain data in the required form, to review instructions and to complete the information collection. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0121), Washington, DC 20503.

Name, title, address, telephone number, and facsimile number of person(s) to whom inquiries concerning this application may be directed:

Name

Title

Street Address

City State Zip Code

Area Code / Phone Number

Area Code / FAX Number

Name

Title

Street Address

City State Zip Code

Area Code / Phone Number

Area Code / FAX Number

Certification

I certify that the information contained in this application has been examined carefully by me and is true, correct, and complete, and is current as of the date of this submission to the best of my knowledge and belief. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 U.S.C. §1001 and §1007.

I also certify, with respect to any information pertaining to an individual and submitted to the Board in (or in connection with) this application, that the applicant has the authority, on behalf of the individual, to provide such information to the Board and to consent or to object to public release of such information. I certify that the applicant and the involved individual consent to public release of any such information, except to the extent set forth in a written request by the applicant or the individual, submitted in accordance with the Instructions to this form and the Board's Rules Regarding Availability of Information (12 C.F.R. Part 261), requesting confidential treatment for the information.

I acknowledge that approval of this application is in the discretion of the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Actions or communications, whether oral, written, or electronic, by the Federal Reserve or its employees in connection with this filing, including approval if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, the United States or any other entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of the Federal Reserve to exercise its supervisory, regulatory, or examination powers under applicable laws and regulations. I further acknowledge that the foregoing may not be waived or modified by any employee or agency of the Federal Reserve or of the United States.

Signed this ________ day of ____________________, ________.
Day Month Year

Signature of Chief Executive Officer or Designee

Print or Type Name Title

Appendix 8

Application to the Board of Governors of the Federal Reserve System for Membership in the Federal Reserve System

Board of Governors of the Federal Reserve System

Application to the Board of Governors of the Federal Reserve System for Membership in the Federal Reserve System—FR 2083

An application is authorized by Sections 9 and 19 of the Federal Reserve Act, 12 U.S.C. §§ 321-328; and related provisions of law, and Section 208.3 of Regulation H.

NOTE: A bank located outside the United States in a dependency or insular possession, which desires to be admitted to the System under Section 19 of the Federal Reserve Act (12 U.S.C. § 466) should contact the Federal Reserve Bank of which it wishes to become a member or at which it wishes to maintain reserves.

Date of Application

Corporate Title of Applicant

Street Address of Head Office

City | State | Zip Code | County

Does Applicant request confidential treatment for any portion of this submission?

☐ Yes

☐ As required by the General Instructions, a letter justifying the request for confidential treatment is included.

☐ The information for which confidential treatment is being sought is separately bound and labeled "CONFIDENTIAL."

☐ No

Name, title, address, telephone number, and e-mail address of person(s) to whom inquiries concerning this application may be directed:

Name

Title

Street Address

City | State | Zip Code

Area Code / Phone Number

E-mail Address

Name

Title

Street Address

City | State | Zip Code

Area Code / Phone Number

E-mail Address

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to gather and maintain data in the required form and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0046), Washington, DC 20503. The Federal Reserve may not conduct or sponsor and an organization (or person) is not required to respond to a collection of information unless it displays a currently valid OMB control number.

General Information and Instructions

Who May Use This Form

This form should be used for an application filed by a newly organizing bank that seeks to become a state member bank, or by an existing bank or savings institution that seeks to convert to a state member bank status.

Preparation of Application

For relevant filing information, Applicants should consult the Board's Regulation H (12 C.F.R. Part 208), a copy of which is available on the Board's public website at http://www.federalreserve.gov/regulations/ or from any Reserve Bank. Additional filing information is available on the Board's public website at http://www.federalreserve.gov/generalinfo/applications/afi/.

Inquiries regarding the preparation and filing of applications should be directed to the Reserve Bank of the Federal Reserve district in which the head office of Applicant is or will be located ("appropriate Reserve Bank"). Applicants are encouraged to contact Federal Reserve staff as soon as possible for assistance in identifying the specific type of information that should be provided in the application and to determine whether a premembership examination of Applicant will be required. Name check and financial information (including the submission of fingerprint cards) may be required for certain individuals associated with a proposed transaction. Such information should be submitted on the Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100-0134), and may be submitted in advance of the application; fingerprint cards must be submitted separately. Contact the appropriate Reserve Bank for further guidance.

The Federal Reserve reserves the right to require the filing of additional statements and information. If any information initially furnished in the application changes significantly during the processing of the application, such changes should be comunicated promptly to the Reserve Bank.

If a proposed new operating bank is involved, Applicant should contact the appropriate Reserve Bank (before the review processes for the charter and deposit insurance of the proposed new bank begin) to determine when the membership application should be filed with the Federal Reserve. The organizers of certain de novo banks may be required to meet with Reserve Bank officials during the application review process. In addition, the appropriate Reserve Bank should be consulted regarding the appropriate time(s) to file any other related Federal Reserve application(s), including any bank branch applications, bank merger applications, or bank holding company applications to acquire bank shares.

If Applicant is a de novo bank, it should complete Section I. If Applicant is a currently operating bank, it should complete Section II. If Applicant is a newly formed, nonoperating bank formed solely to facilitate acquisition of an existing bank, it should complete Section III. All numbered items on the appropriate section should be answered; if the question is not applicable or if the answer is "none," so state.

Applicant also must complete the appropriate Federal Reserve Bank stock application form for its charter type (FR 2083A or FR 2083B) and the Certificate of Organizers or of Directors (FR 2083C).

Answers to questions should be numbered in accordance with the format of this application. The application should be bound and page numbered consecutively with numbers appearing at the bottom of each page.

Eligible banks, as defined in Section 208.2(e) of the Federal Reserve's Regulation H (12 C.F.R. § 208.2(e)), and certain de novo banks controlled by bank holding companies that meet criteria in Section 225.14(c) of the Federal Reserve's Regulation Y (12 C.F.R. § 225.14(c)), are eligible for expedited processing. See Section 208.3(c) of Regulation H (12 C.F.R. § 208.3(c)). The letter submitting the completed application should clearly indicate if Applicant is seeking expedited processing.

Supporting Information

The formal questions in the application are not intended to limit Applicant's presentation. In this regard, Applicant bears the full burden of presenting and documenting a case to meet the statutory criteria for approval. Supporting information for any or all factors, setting forth the basis for Applicant's judgment, may accompany the application.

Confidentiality

Under the provisions of the Freedom of Information Act (the "FOIA"— 5 U.S.C. § 552), the application is a public document and available to the public upon request. Once submitted, an application becomes a record of the Board and may be requested by any member of the public. Board records generally must be disclosed unless they are determined to fall, in whole or in part, within the scope of one or more of the FOIA exemptions from disclosure. See 5 U.S.C. § 552(b)(l)-(9).

The exempt categories include (but are not limited to) "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (exemption 4), and information that, if disclosed, "would constitute a clearly unwarranted invasion of personal privacy" (exemption 6). An Applicant may request confidential treatment for any information submitted in (or in connection with) its application that Applicant believes is exempt from disclosure under the FOIA. For example, if Applicant is of the opinion that disclosure of commercial or financial information would likely result in substantial harm to its competitive position or that of its subsidiaries, or that disclosure of information of a personal nature would result in a clearly unwarranted invasion of personal privacy, confidential treatment of such information may be requested.

General Information and Instructions—Continued

The request for confidential treatment must be submitted in writing concurrently with the filing of the application (or subsequent related submissions), and must discuss in detail the justification for confidential treatment. Such justification must be provided for each portion of the application (or related submissions) for which confidential treatment is requested. Applicant's reasons for requesting confidentiality must specifically describe the harm that would result from public release of the information. A statement simply indicating that the information would result in competitive harm or that it is personal in nature is not sufficient. (A claim that disclosure would violate the law or policy of a foreign country is not, in and of itself, sufficient to exempt information from disclosure. Applicant must demonstrate that disclosure would fall within the scope of one or more of the FOIA exemptions from disclosure.) Applicant must follow the steps outlined immediately below, and certify in the application (or related submissions) that these steps have been followed.

Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "CONFIDENTIAL."

With respect to applications that include information regarding an individual or individuals associated with the proposed transaction, the Board expects Applicant to certify that it has obtained the consent of the individual(s) to public release of such information prior to its submission to the Board or, in the absence of such consent, to submit (or ensure that the individual(s) submit(s)) a timely request for confidential treatment of the information in accordance with these instructions. Information submitted directly by an individual or individuals will become part of the relevant application record, and, accordingly, will be a Board record subject to being requested by any member of the public under FOIA.

The Federal Reserve will determine whether information submitted as confidential will be so regarded, and will advise Applicant of any decision to make available to the public information labeled "CONFIDENTIAL." However, it shall be understood that, without prior notice to Applicant, the Board may disclose or comment on any of the contents of the application in the Order or Statement issued by the Board in connection with its decision on the application. The Board's staff normally will apprise Applicant in the course of the review process that such information may need to be disclosed in connection with the Board's action on the application.

For further information on the procedures for requesting confidential treatment and the Board's procedures for addressing such requests, consult the Board's Rules Regarding Availability of Information, 12 C.F.R. Part 261, including 12 C.F.R. § 261.15, which governs requests for confidential treatment.

Compliance

Applicant is expected to comply with all representations and commitments made in this application. Applicant should immediately contact the appropriate Reserve Bank if there is any change in the structure of the proposal prior to consummation.

Filing Certification

The completed application must be submitted to the appropriate Reserve Bank with the following certification, signed and dated by an authorized official of the proposed member bank:

I certify that the information contained in this application has been examined carefully by me and is true, correct, and complete, and is current as of the date of this submission to the best of my knowledge and belief. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 U.S.C. §§ 1001 and 1007.

I also certify, with respect to any information pertaining to an individual and submitted to the Board in (or in connection with) this application, that the Applicant has the authority, on behalf of the individual, to provide such information to the Board and to consent or to object to public release of such information. I certify that the Applicant and the involved individual consent to public release of any such information, except to the extent set forth in a written request by the Applicant or the individual, submitted in accordance with the Instructions to this form and the Board's Rules Regarding Availability of Information (12 C.F.R. Part 261), requesting confidential treatment for the information.

I request that examiners be assigned to make any investigations necessary.

I acknowledge that approval of this application is in the discretion of the Board of Governors of the Federal Reserve System. Actions or communications, whether oral, written, or electronic, by the Federal Reserve or its employees in connection with this filing, including approval if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, the United States or any other entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of the Federal Reserve to exercise its supervisory, regulatory, or examination powers under applicable laws and regulations. I further acknowledge that the foregoing may not be waived or modified by any employee or agency of the Federal Reserve or of the United States.

SECTION I
De Novo Bank

Financial and Managerial Information

Provide the following:

1. Provide a copy of the Interagency Charter and Federal Deposit Insurance Application ("ICDIA") filed with the state and federal regulatory agencies in connection with this proposal.

   NOTE: The Federal Reserve does not require (1) notice of publication of an application for membership; (2) a copy of the electronic version of the ICDIA information provided to other banking agencies; or (3) the Oath of Directors in connection with the ICDIA. In addition, the Federal Reserve does not require responses to 4(b), 5(g) and 5(i) of the ICDIA because factors under the Community Reinvestment Act, the National Environmental Policy Act, and National Historic Preservation Act are not within the factors considered by the Federal Reserve in granting membership. The Federal Reserve has different fingerprint requirements than those reflected in the ICDIA. Accordingly, an applicant must consult with the appropriate Reserve Bank to determine which individuals associated with a proposal should submit fingerprint cards.

   a. If projections contained in the ICDIA do not indicate profitable operations by the end of the third year, comment as to the reasons why and provide an estimate of the period that will be required before operations become profitable.
   b. With respect to the proposed bank's capital accounts, de novo banks must comply with the Federal Reserve capital requirements for de novo banks.
   c. Estimate the date on which the new bank expects to open for business.

SECTION II

Currently Operating Bank

Financial and Managerial Information

Provide the following:

1. Description of any plans of Applicant (and/or Applicant's parent company) to raise or replace Tier 1 or Tier 2 capital.
2. A list of the principals of Applicant (and/or Applicant's parent company)[1] that reflects any proposed changes or additions after Applicant becomes a member, providing information with respect to each principal as follows:
   a. Name and address (city and state/country). If the principal's country of citizenship is different than his or her country of residence, then state the country of citizenship;
   b. Titles or positions with Applicant (and/or Applicant's parent company);
   c. Number and percentage of each class of shares of Applicant (and/or Applicant's parent company) owned, controlled or held with power to vote by this individual. Show separately for each listed shareholder the number of Applicant's shares held less than twelve months prior to date of application and furnish full details of the purchases including dates and costs:
      In responding to item 2.c or 2.e, include shares owned, controlled or held with power to vote by principal's spouse, dependents and other immediate family. Give record of ownership and, to the extent information is available, beneficial ownership of shares held by trustees, nominees, or in street names;
   d. Principal occupation if other than with Applicant (and/or Applicant's parent company);
   e. If 10 percent or more of the outstanding shares in any other depository institution[2] or depository institution holding company are held by a principal, give name and location of the other depository institution. Information that has been collected and updated within the past twelve months may be submitted unless Applicant has reason to believe that such information is incorrect.
   f. All new principals that intend to own less than 10 percent of Applicant (or Applicant's parent company) should submit the biographical section of the Interagency Biographical and Financial Form. All new principals that intend to own 10 percent or more of Applicant (or Applicant's parent company) should submit all sections of the Interagency Biographical and Financial Form.
3. A description of recent or anticipated changes in the management of Applicant (or Applicant's parent company). The biographical section of the Interagency Biographical and Financial Form should be provided for any proposed new officers or directors of Applicant (not already provided in response to question 2f).
4. A discussion of management's plans for the bank, including proposed changes in products or services.
5. A list of management officials[3] who are also management officials of any other depository organization located in the same Metropolitan Statistical Area (MSA) as Applicant, or—if Applicant is not located within an MSA—in cities, towns or villages whose borders are within ten road miles at their closest point to the city, town, or village where Applicant's main office or branch is located. Give name and location of other depository organizations and position held in such organization.
6. If Applicant plans to become affiliated with another bank holding company or other business entity, give full details regarding the proposed affiliation. In addition, if the proposed acquirer(s) is (are) not existing banks or bank holding companies, explain briefly the business activities of the acquiring party(ies).
7. For each subsidiary of Applicant, provide the following information: (a) name and location; (b) brief description of the business activities and legal authority(ies) for the activities; (c) number of shares of each class outstanding and number owned or controlled by the bank; and (d) recent financial statement.
8. A copy of the charter (certificate of authority to commence business) and articles of incorporation of the bank, with all amendments to date, recently certified by the appropriate state official. (If Applicant has been involved in a consolidation whereby all rights, franchises, and interests of constituent institutions pass by operation of law to the consolidated bank, information should be furnished as to any corporate powers acquired by the bank by virtue of such consolidation other than those shown in its charter or articles of incorporation). If the proposed transaction involves the issuance of a new charter, the charter and Articles of Incorporation may be submitted in draft form (i.e., certification is not required) as soon as the documents become available.

1. The term principal as used herein means any individual, corporation, or other entity that (1) owns or controls, directly or indirectly, individually or as members of a group acting in concert, 10 percent or more of the outstanding shares of any class; (2) is a director, trustee, partner, or executive officer; or (3) with or without ownership interest, participates, or has the authority to participate in major policymaking functions, whether or not the individual has an official title or is serving without compensation. If Applicant believes that any such individual should not be regarded as a principal, Applicant should so indicate and give reasons for such opinion.
2. For purposes of this application, a "depository institution" is defined as a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union.
3. "Management official" means an employee or officer with management functions (including an advisory director or honorary director), a trustee of a business organization under the control of trustees (e.g., a mutual savings bank), or any person who has a representative or nominee serving in any such capacity. (See the Board's Regulation L, 12 C.F.R. §§ 212.2(h) and (k).)

Currently Operating Bank—Continued

Competition and Convenience and Needs

1. Indicate the specific location of the bank and all branches. Include a description of the general market area (i.e., MSA, county, city, or other such overall trade area) in which the bank and its branches are or expect to be located. The discussion should include the size(s) in terms of population, the principal elements of the local economy, and the future economic outlook.

2. Provide a statement of corporate powers granted by the state or functions that have been or are now being exercised or performed other than those usual to commercial banking.

SECTION III

Non-Operating Bank

If Applicant is a newly formed, non-operating "shell," formed solely to facilitate the acquisition of an existing bank, provide an introductory statement outlining full details of the proposed transaction.

If the bank to be acquired or merged into the shell is a state member bank of the Federal Reserve System, no further information is necessary unless specifically requested by the appropriate Reserve Bank. If the bank to be acquired or merged into the shell is not a state member bank, provide the information requested in Section II, omitting only numbered item 6, the contents of which should be included in the introductory statement requested above. In either case, the statement requested above should include any proposed financial or managerial changes, such as changes in the directorate or official staff, that will attend the transaction. If the information required is provided in a related application, such material may be incorporated by reference.

FOR USE BY STATE BANKS, EXCEPT MUTUAL SAVINGS BANKS, AND FOR USE BY NATIONAL BANKS CONVERTING INTO STATE MEMBER BANKS.

FR 2083A
OMB Number 7100-0046
Approval expires February 28, 2018

Board of Governors of the Federal Reserve System

Application for Federal Reserve Bank Stock—FR 2083A

____
Date of Application

At a meeting of the ______________________________ , ______________________________
Governing Board — Corporate Title of Applying Bank

______________________________ , ______________________________ , duly
City or Town — State

called and held on the ____________ day of ____________ , ________ , the following resolution was adopted:
Day — Month — Year

"WHEREAS, it is the sense of this meeting that application should be made on behalf of this bank for membership in the Federal Reserve System in accordance with the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto;

"WHEREAS, this bank reported on its most recent Report of Condition (or contemplates reporting after the formation, merger, or

consolidation on ____________) paid-up capital of $ ____________________ , paid-up surplus of $ ____________________ ,
Date of Transaction

and[1] a related equity adjustment of $ ____________________ (if necessary) and;

"WHEREAS, under the provisions of the Federal Reserve Act, such a bank applying for membership in the Federal Reserve System is required to subscribe to stock in a Federal Reserve Bank in a sum equal to six percent of the paid-up capital stock and surplus[1] of such applying bank;

"NOW, THEREFORE, BE IT RESOLVED, that the President or Vice President and the Cashier or Secretary of this bank be and they are hereby authorized, empowered, and directed to make application for and to subscribe to the appropriate number of shares, of a par value of $100 each, of the capital stock of the Federal Reserve Bank of ______________________________ , as determined on the basis of the capital stock and surplus, as defined in Regulation I, of this bank as of the date upon which its membership in the Federal Reserve System becomes effective; to pay for[2] such stock in accordance with the provisions of the Federal Reserve Act; to agree for and in behalf of this bank that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law that are applicable to state banks and trust companies which become members of the Federal Reserve System; and to agree for and in behalf of this bank that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of ______________________________ and all state or federal supervisory authorities having jurisdiction of this bank."

1. In accordance with Regulation I, the capital stock and surplus of a member bank includes the paid-up capital stock and paid-up surplus of the bank (for both common and preferred stock), less any net deficit amount reported by the bank on its report of condition as retained earnings and accumulated other comprehensive income. This latter equity adjustment is made only if a net negative amount is to be reported for those two categories on the bank's report of condition; otherwise no adjustment is necessary. In the case of a de novo bank, in order to avoid the necessity of making applications for additional stock in the Federal Reserve Bank, as additional installments of the capital stock and surplus of the applying bank are paid in, application may be made for stock in the Federal Reserve Bank in an amount equal to six percent of the authorized capital of the applying bank plus six percent of the amount of surplus, if any, which the subscribers to the capital stock of the applying bank have agreed to pay in.
2. One-half of the amount of the bank's subscription shall be paid to the Federal Reserve Bank and the remaining half will be subject to call when deemed necessary by the Board of Governors of the Federal Reserve System.

This application should be sent to the FEDERAL RESERVE BANK of your district.

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the Board of Directors of this bank on the date specified and still in full force and effect.

____
Cashier, Secretary, or Treasurer

______________________________, ______________________, ______________
Corporate Title of Applying Bank, City or Town, State

Pursuant to the foregoing resolution, ______________________________,
Corporate Title of Applying Bank

______________________________, ______________, hereby makes application for and subscribes to
City or Town, State

__________ shares[3] of the capital stock of the Federal Reserve Bank of ______________________, of a par value of $100 each, as determined on the basis of the capital stock and surplus, as defined in Regulation I, of this bank as of the date upon which the membership of this bank in the Federal Reserve System becomes effective; agrees to pay for the same in accordance with the provisions of the Federal Reserve Act; agrees that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law that are applicable to state banks and trust companies which become members of the Federal Reserve System; and agrees that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of ______________________ and all state or federal supervisory authorities having jurisdiction of this bank.

The required information, as indicated in the General Information and Instructions, is attached to and made a part of this application.

______________________________, ______________________, ______________
Corporate Title of Applying Bank, City or Town, State

By ______________________________
President or Vice President

[SEAL][4]

ATTEST:

____
Cashier, Secretary, or Treasurer

3. If six percent of the paid-up or authorized capital and surplus, whichever is adopted as the base of this application, amounts to a sum not divisible by 100, the bank should apply for one additional share of stock for any excess or fractional part of $100.
4. If the seal of the bank has not been obtained, or if a seal is not required under state law, it may be omitted from the application.

FOR USE BY MUTUAL SAVINGS BANKS.

Board of Governors of the Federal Reserve System

Application for Federal Reserve Bank Stock—FR 2083B

____
Date of Application

At a meeting of the ______________________________ (Governing Board), ______________________________ (Corporate Title of Applying Bank)

______________________________ (City or Town), ____________________ (State), duly

called and held on the __________ (Day) day of _______________ (Month), ______ (Year), the following resolution was adopted:

"WHEREAS, it is the sense of this meeting that application should be made on behalf of this bank for membership in the Federal Reserve System in accordance with the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto;

"WHEREAS, this bank reported on its most recent Report of Condition (or contemplates reporting after the formation, merger, or consolidation on __________ (Date of Transaction)) total deposit liabilities of $____________________; and (check one)

☐ Mutual savings banks authorized to purchase Federal Reserve Bank stock.[1]

"WHEREAS, under the provisions of the Federal Reserve Act, such a bank applying for membership in the Federal Reserve System is required to subscribe to capital stock in the Federal Reserve Bank in an amount equal to six-tenths of one percent of its total deposit liabilities as reported on the bank's most recent Report of Condition (or as reported above) and as permitted by the laws under which it was organized;

☐ Mutual savings banks not authorized to purchase Federal Reserve Bank stock.

"WHEREAS, this bank is not permitted by the laws under which it was organized to purchase stock in a Federal Reserve Bank; and

"WHEREAS, such a bank applying for membership in the Federal Reserve System is required, upon admission to the System, to deposit with the Federal Reserve Bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock of the Federal Reserve Bank if authorized to purchase such stock;

"NOW, THEREFORE, BE IT RESOLVED, that the President or Vice President and the Treasurer, Cashier, or Secretary of this bank be and they are hereby authorized, empowered, and directed to make application for and to subscribe to the appropriate number of shares, of a par value of $100 each, of the capital stock of or, in the case of a mutual savings bank not authorized to purchase Federal Reserve Bank stock, application for permission to deposit the appropriate amount with, the Federal Reserve Bank of ____________________, as determined on the basis of the total deposit liabilities of this bank as reported on the bank's most recent Report of Condition (or as reported above); to pay for[2] such stock or deposit in accordance with the provisions of the Federal Reserve Act; to agree for and in behalf of this bank that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law that are applicable to mutual savings banks which become members of the Federal Reserve System; and to agree for and in behalf of this bank that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of ____________________________ and all state or federal supervisory authorities having jurisdiction of this bank."

1. Including mutual savings banks previously admitted to membership.
2. One-half of the amount of the bank's subscription shall be paid to the Federal Reserve Bank and the remaining half will be subject to call when deemed necessary by the Board of Governors of the Federal Reserve System.

This application should be sent to the FEDERAL RESERVE BANK of your district.

FOR USE BY MUTUAL SAVINGS BANKS.

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the ______________________
Governing Board
of this bank on the date specified and still in full force and effect.

____
Cashier, Secretary, or Treasurer

______________________________, ______________________, ______________________
Corporate Title of Applying Bank, City or Town, State

Pursuant to the foregoing resolution, ____,
Corporate Title of Applying Bank

____________________, ______________, hereby makes application for ____________________ shares,[3]
City or Town / State

of a par value of $100 each, of the capital stock of (or, in the case of a mutual savings bank not authorized to purchase Federal Reserve Bank stock, application for permission to deposit the appropriate amount with) the Federal Reserve Bank of ______________________, as determined on the basis of the total deposits liabilities of this bank as reported on the bank's most recent Report of Condition (or as reported above); agrees to pay for the same in accordance with the provisions of the Federal Reserve Act; agrees that, upon its admission to membership in the Federal Reserve System, it will comply with all the requirements of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System made pursuant to law which are applicable to mutual savings banks which become members of the Federal Reserve System; and agrees that reports and information regarding this bank may be interchanged between the Federal Reserve Bank of ______________________ and all state or federal supervisory authorities having jurisdiction of this bank.

The required information, as indicated in the General Information and Instructions, is attached to and made a part of this application.

______________________________________, ____________________, ____________________
Corporate Title of Applying Bank / City or Town / State

By ______________________________________
President or Vice President

[SEAL][4]

ATTEST:

____
Cashier, Secretary, or Treasurer

3. If six-tenths of one percent of total deposit liabilities amounts to a sum not divisible by 100, the bank should apply for one additional share of stock for any excess or fractional part of $100.
4. If the seal of the bank has not been obtained, or if a seal is not required under state law, it may be omitted from the application.

Appendix 9

Interagency Charter and Federal Deposit Insurance Application

OMB No. for FDIC 3064-0001
OMB No. for OCC 1557-0014
OMB No. for OTS 1550-0005
Expiration Date: 08/31/2019

INTERAGENCY CHARTER AND FEDERAL DEPOSIT INSURANCE APPLICATION

GENERAL INFORMATION AND INSTRUCTIONS

Preparation and Use

This application is used to effect a transaction under:

- Sections 5 and 6 of the Federal Deposit Insurance Act (FDIA), as amended (12 U.S.C. 1815, 1816), for federal deposit insurance.
- Section 5(e) of the Home Owners' Loan Act (HOLA), as amended (12 U.S.C. 1464(e)), for a federal savings association charter.
- The National Bank Act, as amended (12 U.S.C. 21 *et seq.*), for a national bank charter.
- The state law for applying for state depository charters, as approved by state regulatory authorities.

All questions must be answered with complete and accurate information that is subject to verification. If the answer is "none," "not applicable," or "unknown," so state. Answers of "unknown" should be explained.

The questions in the application are not intended to limit the Applicant's presentation nor are the questions intended to duplicate information supplied on another form or in an exhibit. For such information, a cross reference to the information is acceptable. *Any such cross-reference must be made to a specific cite or location in the documents, so the information can be located easily.* Supporting information for all relevant factors, setting forth the basis for Applicant's conclusions, should accompany the application. The regulatory agency may request additional information.

This application form collects information that the regulatory agencies will need to evaluate a charter or insurance application. While most of the information will be available when the organizers submit the application, some information will not be available at that time. Each agency has specific purposes and different timing requirements in collecting some of this information; for example, receipt of the organizers' draft policies. For any question about when to submit a specific item, organizers should contact the appropriate regulatory agencies to discuss the specific timing for submission.

The regulatory agency must consider the applicable statutory requirements set forth in the preceding provisions, as well as applicable regulatory requirements, when acting on this application. For additional information regarding these statutory and regulatory requirements, as well as processing procedures and guidelines and any supplemental information that may be required, please refer to the appropriate regulatory agency's procedural guidelines [i.e., *Comptroller's Corporate Manual*, the FDIC's Rules and Regulations (12 C.F.R. 303) and Statement of Policy on "Applications for Deposit Insurance", the OTS' *Applications Processing Handbook,* or the application guidelines for the state in which the Applicant seeks a state charter]. The Applicant may contact the agency directly for specific instruction or visit their websites at www.fdic.gov, www.occ.treas.gov, www.ots.treas.gov, and www.csbs.org (through "Links" to each state banking department).

Notice of Publication

The Applicant must publish notice of the proposed organization in a newspaper of general circulation in the community or communities in which the proposed financial institution will be located. Contact the appropriate regulatory agency for the specific requirements of the notice of publication.

Electronic Submission

In addition to an original application and the appropriate number of signed copies, the regulatory agencies would like to have an electronic copy of the information in the application, especially of the business plan's financial projections. Submission of an electronic copy is voluntary. It will be used only for internal review and processing and will not be released to the public. The electronic copy may be provided on a computer diskette, using common word processing and spreadsheet software. For E-mail submissions, contact the appropriate regulatory agency for instructions and information about secure transmission of confidential material.

Confidentiality

Any Applicant desiring confidential treatment of specific portions of the application must submit a request in writing with the application. The request must discuss the justification for the requested treatment. The Applicant's reasons for requesting confidentiality should specifically demonstrate the harm (for example, loss of competitive position, invasion of privacy) that would result from public release of information (5 U.S.C. 552 or relevant state law). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." The Applicant should follow the same procedure when requesting confidential treatment for the subsequent filing of supplemental information to the application.

The Applicant should contact the appropriate regulatory agency for specific instructions regarding requests for confidential treatment. The appropriate regulatory agency will determine whether the information will be treated as confidential and will advise the Applicant of any decision to publicly release information labeled as "Confidential."

INTERAGENCY CHARTER AND FEDERAL DEPOSIT INSURANCE APPLICATION

(Check all appropriate boxes.)

Type of Charter

- ☐ National Bank
- ☐ State Bank
- ☐ Federal Savings Bank or Association
- ☐ State Savings Association
- ☐ Other ______________________

Special Focus

- ☐ Community Development
- ☐ Cash Management
- ☐ Trust
- ☐ Bankers' Bank
- ☐ Credit Card: ☐ CEBA ☐ Non-CEBA
- ☐ Other ______________________________

For OCC: ☐ Standard ☐ Expedited

Chartering Agency

- ☐ Comptroller of the Currency
- ☐ Office of Thrift Supervision
- ☐ State ______________________

Insurance Fund

- ☐ Bank Insurance Fund
- ☐ Savings Association Insurance Fund

Type of Insurance Application

- ☐ De Novo
- ☐ Operating Noninsured Institution
- ☐ Other ______________________________

Federal Reserve Status

- ☐ Member Bank
- ☐ Nonmember Bank

Proposed Depository Institution (institution)

____
Name

____
Street

______________________ ______________________ ________________
City State ZIP Code

Holding Company Identifying Information (if applicable)

____
Name

____
Street

______________________ ______________________ ________________
City State ZIP Code

Contact Person

____
Name

____
Street

______________________ ______________________ ________________
City State ZIP Code

1. Overview

(a) Provide a brief overview of the application. The overview should describe the institution's business and any special market niche, including the products, market, services, and any nontraditional activities.

(b) Describe any issues about the permissibility of the proposal with regard to applicable state or federal laws or regulations. Identify any regulatory waiver requests and provide adequate justification.

(c) List and provide a copy of all applications filed in conjunction with this proposal, such as applications for holding company, trust powers, branch offices, service corporations, and other subsidiaries.

(d) When available, provide a copy of all public or private offering materials and the proposed form of stock certificate, including any required restrictive legends.

(e) (Provide a copy of the proposed articles of association, articles of incorporation, or charter, and proposed bylaws.

(f) Provide a copy of the business plan. The business plan should address, at a minimum, the topics contained in the appropriate regulatory agency's Business Plan Guidelines.

2. Management

(a) Provide a list of the organizers, proposed directors, senior executive officers, and any individual, or group of proposed shareholders acting in concert, that will own or control 10 percent or more of the institution's stock. For each person listed, attach an Interagency Biographical and Financial Report, a fingerprint card, and indicate all positions and offices currently held or to be held with the institution's holding company and its affiliates, if applicable. Include the signed "Oath of Director" for each proposed director. For an OTS filing, provide a RB 20a Certification for each person listed.

(b) Describe each proposed director's qualifications and experience to serve and oversee management's implementation of the business plan. Describe the extent, if any, to which directors or major stockholders are or will be involved in the day-to-day management of the institution. Also list the forms of compensation, if any.

(c) Provide a list of board committees and members.

(d) Describe any plans to provide ongoing director education or training.

(e) Describe each proposed senior executive officer's duties and responsibilities and qualifications and experience to serve in his/her position. If a person has not yet been selected for a key position, list the criteria that will be required in the selection process. Discuss the proposed terms of employment, including compensation and benefits, and attach a copy of all pertinent documents, including an employment contract or compensation arrangement. Provide the aggregate compensation of all officers.

(f) Describe any potential management interlocking relationships (12 U.S.C. 1467a(h)(2), 3201-3208, or applicable state law) that could occur with the establishment or ownership of the institution. Include a discussion of the permissibility of the interlock with regard to relevant law and regulations or include a request for an exemption.

(g) Describe any potential conflicts of interest.

(h) Describe any transaction, contract, professional fees, or any other type of business relationship involving the institution, the holding company, and its affiliates (if applicable), and any organizer, director, senior executive officer, shareholder owning or controlling 10 percent or more, and other insiders. Include professional services or goods with respect to organizational expenses and bank premises and fixed asset transactions. (Transactions between affiliates of the holding company that do not involve the institution need not be described.)

1) State whether the business relationship is made in the ordinary course of business, is made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders, and does not present more than the normal risk of such transaction or present other unfavorable features.

2) Specify those organizers that approved each transaction and whether the transaction was disclosed to proposed directors and prospective shareholders.

3) Provide all relevant documentation, including contracts, independent appraisals, market valuations, and comparisons.

(i) Describe all stock benefit plans of the institution and holding company, including stock options, stock warrants, and other similar stock-based compensation plans, for senior executive officers, organizers, directors, and other insiders. Include in the description:

1) The duration limits.

2) The vesting requirements.

3) Transferability restrictions.

4) Exercise price requirements.

5) Rights upon termination.

6) Any "exercise or forfeiture" clause.

7) Number of shares to be issued or covered by the plans.

Provide a list of participants, allocation of benefits to each participant, and a copy of each proposed plan. (Plans must conform to applicable regulatory guidelines.)

3. Capital

(a) For each class of stock, provide the number of authorized shares, the number of shares to be issued, par value, voting rights, convertibility features, liquidation rights, and the projected sales price per share. Indicate the amount of net proceeds to be allocated to common stock, paid-in surplus, and other capital segregations.

(b) Describe any noncash contributions to capital, and provide supporting documents for assigned values, including an independent evaluation or appraisal.

(c) Discuss the adequacy of the proposed capital structure relative to internal and external risks, planned operational and financial assumptions, including technology, branching, and projected organization and operating expenses. Present a thorough justification to support the proposed capital, including any off-balance-sheet activities contemplated. Describe any plans for the payment of dividends.

(d) List all known subscribers to stock. For organizers, directors, 10 percent shareholders, senior executive officers, and other insiders, include the number of shares and anticipated investment and the amount of direct and indirect borrowings to finance the investment. Discuss how any debt will be serviced.

(e) List recipients and amounts of any fees, commissions, or other considerations in connection with the sale of stock.

(f) Indicate whether the institution plans to file for S Corporation tax status.

4. Convenience and Needs of the Community

NOTE: This information must be consistent with the proposed business plan.

(a) Market Characteristics

1) Define the intended geographical market area(s). Include a map of the market area, pinpointing the location of proposed bank's offices and offices of competing depository institutions.

2) Describe the competitive factors the institution faces in the proposed market and how the institution will address the convenience and needs of that market to maintain its long-term viability.

3) Discuss the economic environment and the need for the institution in terms of population trends, income, and industry and housing patterns.

(b) Community Reinvestment Act (CRA) Plan[1]

NOTE: The CRA Plan must be bound separately.

1) Identify the assessment area(s) according to the CRA regulations.[2]

2) Summarize the performance context for the institution based on the factors discussed in the CRA regulations.[3]

3) Summarize the credit needs of the institution's proposed assessment area(s).

4) Identify the CRA evaluation test[4] under which the institution proposes to be assessed.

5) Discuss the institution's programs, products, and activities that will help meet the existing or anticipated needs of its community(ies) under the applicable criteria of the CRA regulation, including the needs of low- and moderate-income geographies and individuals.

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[1] See applicable state requirements.

[2] See 12 C.F.R. 25.41, 345.41, 563.41.

[3] See 12 C.F.R. 25.21(b), 345.21(b), 563e.21(b).

[4] See 12 C.F.R. 25.21(a); 345.21(a); 563e.21(a).

5. Premises and Fixed Assets

(a) Provide a physical description for permanent premises and discuss whether they will be publicly and handicapped accessible. Indicate the level and type of property insurance to be carried.

(b) If the permanent premises are to be purchased, provide name of seller, purchase price, cost and description of necessary repairs and alterations, and annual depreciation. If the premises are to be constructed, provide the name of the seller, the cost of the land, and the construction costs. Indicate the percentage of the building that will be occupied by the bank. Provide a copy of the appraisal.

(c) If the permanent premises are to be leased, provide name of owner, terms of the lease, and cost and description of leasehold improvements. Provide a copy of the proposed lease when available.

(d) If temporary quarters are planned, provide a description of interim facility, length of use, lease terms, and other associated commitments and costs.

(e) State whether proposed premises and fixed asset expenditures conform to applicable statutory limitations.

(f) Outline the security program that will be developed and implemented, including the security devices.[5]

(g) Discuss any significant effect the proposal will have on the quality of the human environment. Include in the discussion changes in air and/or water quality, noise levels, energy consumption, congestion of population, solid waste disposal, or environmental integrity of private land within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321, et seq.

(h) Describe any plan to establish branches or relocate the main office within the first three years. Any acquisition or operating expenses should be reflected in the financial projections.

(j) Indicate if the establishment of the proposed main office and/or any branch site may affect any district, site, building, structure, or object listed in, or eligible for listing in, the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470f. (See the Advisory Council on Historic Preservation at www.achp.gov for the Act and implementing regulations.) Specify how such determination was made:

[5] See 12 C.F.R. 21, 326, 568.

1) Consultation with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) (when tribal lands or historic properties of significance to a tribe are involved).
2) Reviewed National Register of Historic Places (see www.cr.nps.gov/nr).
3) Applied National Register criteria to unlisted properties.[6]
4) Reviewed historical records.
5) Contact with preservation organizations.
6) Other (describe).

As appropriate, provide a copy of any documentation of consultation with the SHPO and/or THPO. *You are reminded that if a historic property may be affected, no site preparation, demolition, alterations, construction or renovation may occur without the appropriate regulatory agency's authorization.*

6. Information Systems

(a) State whether the institution plans to market its products and services (the ability to do transactions or account maintenance) via electronic means. If yes, specifically state the products and services that will be offered via electronic banking or the Internet.

(b) Outline the proposed or existing information systems architecture and any proposed changes or upgrades. The information should describe how: (1) the information system will work within existing technology; (2) the information system is suitable to the type of business in which the institution will engage; (3) the security hardware, software, and procedures will be sufficient to protect the institution from unauthorized tampering or access; and (4) the organizers and directors will allocate sufficient resources to the entire technology plan.

(c) Provide lists or descriptions of the primary systems and flowcharts of the general processes related to the products and services. The level of detail in these system descriptions should be sufficient to enable verification of the cost projections in the *pro formas*.

(d) Estimate the start-up budget for the information systems related to the products and services and the expected annual operating and maintenance costs (including telecommunications, hardware, software, and personnel).

[6] See 36 C.F.R. 60.4.

(e) Describe the physical and logical components of security. Describe the security system and discuss the technologies used and key elements for the security controls, internal controls, and audit procedures. Discuss the types of independent testing[7] the institution will conduct to ensure the integrity of the system and its controls.

(f) Describe the information security program that will be in place to comply with the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information."[8]

7. Other Information

(a) List activities and functions, including data processing, that will be outsourced to third parties, identifying the parties and noting any affiliations. Describe all terms and conditions of the vendor management activities and provide a copy of the proposed agreement when available. Describe the due diligence conducted and the planned oversight and management program of the vendors' or service providers' relationships (for general vendor management guidance, see the Appendix of the FFIEC's guidance, Risk Management of Outsourced Technology Services).

(b) List all planned expenses related to the organization of the institution and include the name of recipient, type of professional service or goods, and amount. Describe how organization expenses will be paid.

(c) Provide evidence that the institution will obtain sufficient fidelity coverage on its officers and employees to conform with generally accepted banking practices.

(d) If applicable, list names and addresses of all correspondent depository institutions that have been established or are planned.

(e) Provide a copy of management's policies for loans, investments, liquidity, funds management, interest rate risk, and other relevant policies. Provide a copy of the Bank Secrecy Act program. Contact the appropriate regulatory agencies to discuss the specific timing for submission.

(f) For Federal Savings Banks or Associations, include information addressing the proposed institution's compliance with qualified thrift lender requirements.

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[7] Independent tests should cover general and environmental controls as well as audit, monitoring, and balancing controls. Independent testing will provide an objective opinion on the adequacy of these controls.

[8] See 15 U.S.C. 6801, 6805(b); 12 C.F.R. 30; 308 and 364; 568 and 570.

(g) If the institution is, or will be, affiliated with a company engaged in insurance activities that are subject to supervision by a state insurance regulator, provide:

1) The name of insurance company.
2) A description of the insurance activity that the company is engaged in and has plans to conduct.
3) A list of each state and the lines of business in that state in which the company holds, or will hold, an insurance license. Indicate the state where the company holds a resident license or charter, as applicable.

OCC CERTIFICATION

We, the organizers, certify that the information contained in this application has been examined carefully and is true, correct, and complete, and is current as of the date of this submission. We also certify that any misrepresentations or omissions of material facts with respect to this application, any attachments to it, and any other documents or information provided in connection with the application for the organization of the proposed financial institution and federal deposit insurance may be grounds for denial or revocation of the charter and/or insurance, or grounds for an objection to the undersigned as proposed director(s) or officer(s) of the proposed financial institution, and may subject the undersigned to other legal sanctions, including the criminal sanctions provided for in 18 U.S.C. 1001, 1007, and 1014. We request that examiners be assigned to make any investigations necessary.

We acknowledge that approval of this application is in the discretion of the appropriate federal banking agency or agencies. Actions or communications, whether oral, written, or electronic, by an agency or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

Signature	**Date**	**Typed Name**

FDIC CERTIFICATION

We, the organizers, certify that the information contained in this application has been examined carefully and is true, correct, and complete, and is current as of the date of this submission. We also certify that any misrepresentations or omissions of material facts with respect to this application, any attachments to it, and any other documents or information provided in connection with the application for the organization of the proposed financial institution and federal deposit insurance may be grounds for denial or revocation of the charter and/or insurance, or grounds for an objection to the undersigned as proposed director(s) or officer(s) of the proposed financial institution, and may subject the undersigned to other legal sanctions, including the criminal sanctions provided for in 18 U.S.C. 1001, 1007, and 1014. We request that examiners be assigned to make any investigations necessary.

We acknowledge that approval of this application is in the discretion of the appropriate federal banking agency or agencies. Actions or communications, whether oral, written, or electronic, by an agency or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

It is understood that the Board of Directors of the Federal Deposit Insurance Corporation (Corporation), in applying the factors set out in federal statutes, will consider the application only with respect to the general character or type of business stated and that the depository institution will not engage in any other business without the prior written consent of the Corporation.

It is further understood that federal deposit insurance will not become effective (a) until the proposed depository institution has been incorporated and authorized to engage in the business of receiving deposits, (b) until the board of directors of the depository institution has adopted a resolution ratifying and confirming the action of the incorporators in making this application with supporting information, (c) until the depository institution has fulfilled such requirements, if any, as the Corporation may impose as a condition of its approval of this application, and (d) until the depository institution has been notified that its membership in the Corporation has been approved.

Signature	**Date**	**Typed Name**

OTS CERTIFICATION

We, the organizers, certify that:

(i) The information contained in this application has been examined carefully and is true, correct, and complete, and is current as of the date of this submission.

(ii) Any misrepresentations or omissions of material facts with respect to this application, any attachments to it, and any other documents or information provided in connection with the application for the organization of the proposed financial institution and federal deposit insurance may be grounds for denial or revocation of the charter and/or insurance, or grounds for an objection to the undersigned as proposed director(s) or officer(s) of the proposed association, and may subject the undersigned to other legal sanctions, including the criminal sanctions provided for in 18 U.S.C. 1001, 1007, and 1014.

(iii) The undersigned will not represent themselves as authorized to organize such association until this application is approved and, upon notification that the application has been approved, they will proceed only in accordance with the provisions of the Home Owners' Loan Act of 1933, as amended, and with rules and regulations made thereunder.

(iv) The undersigned are not acting in this application as representative or on behalf of any person, partnership, association, or corporation undisclosed to the Office of Thrift Supervision.

(v) No charge or expense incurred in connection with the organization of the association shall be charged to the association.

(vi) No funds or money will be accepted for deposit or collected on account by or for the association until this application is approved and its organization has been completed.

(vii) *For mutual associations*, an organizational committee will be created promptly upon approval of this application, and the committee members will serve as temporary officers of the association until officers are elected by the members of the association.

We request that examiners be assigned to make any investigations necessary.

We also acknowledge that approval of this application is in the discretion of the Office of Thrift Supervision. Actions or communications, whether oral, written, or electronic, by the Office of Thrift Supervision or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the Office of Thrift Supervision, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

Signature	Date	Typed Name

EXHIBITS (check all that apply)

- ☐ Business Plan
  - ☐ Financial Projections
- ☐ CRA Plan
- ☐ Articles of Association, Articles of Incorporation, or Charter
- ☐ Bylaws
- ☐ Oath of Director
- ☐ Interagency Biographical and Financial Reports
- ☐ Fingerprint cards (appropriate regulatory agency)
- ☐ Publication Certification/Affidavit/Notice of Publication
- ☐ Copies of contracts/agreements
  - ☐ Employment/compensation
  - ☐ Service providers
  - ☐ Other
- ☐ Stock Benefit Plans
- ☐ Economic survey or market feasibility study
  - ☐ Market Area Map
- ☐ Waiver request, specify: ______________________________
- ☐ Offering Materials
- ☐ Proposed stock certificate
- ☐ Corporate or holding company audited statements or financial reports
- ☐ OCC/OTS/state filing fee
- ☐ Copy of policies, specify: ______________________________

OTS ONLY:

- ☐ RB 20a Certification

Oath of the Bank Director

Bank Name _____
State of _____
County of _____

Date _____

_____

I, the undersigned, a (proposed) director of the above-named bank do solemnly swear (affirm) that:

As a director, I have a legal responsibility and a fiduciary duty to shareholders to administer the depository institution's affairs faithfully and to oversee its management. In carrying out my duties and responsibilities, I shall exercise reasonable care and place the interests of the depository institution before my own interests. I shall fulfill my duties of loyalty and care to the above-named depository institution.

I shall, commensurate with my duties, diligently and honestly administer the affairs of the depository institution, and I shall not knowingly violate, or willingly permit to be violated, any applicable statute or regulation. I shall ensure that I learn of changes in statutes, regulations, and policies of the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, or any state to whose jurisdiction my association is subject, which affect my duties, responsibilities, or obligations as a director and affiliated person of the association.

I am the owner, in good faith and in my own right, of the number of shares of stock that the law requires. I have either subscribed for this stock or it is issued and outstanding, and it is not hypothecated, or in any way pledged, as security for any loan or debt.

I shall attend meetings of the board of directors and participate fully on all committees of the board to which I am appointed.

Signature
Typed Name _____
Mailing Address _____
City _____ State _____ ZIP Code _____

Notary's Affirmation

Sworn to before me and subscribed in my presence, this ___ day of __________, _________.

Notary Public
My Commission Expires ______________________________

Oath of Savings Association Director

Name of Savings Association ______________________________
City ____________________ County ____________________ State ____________

I, the undersigned, a [proposed] director of the above-named savings association, do solemnly swear (affirm) as follows:

1. I acknowledge that service as a director of a federally insured savings association is an important undertaking that carries with it significant duties and responsibilities. I have read and understand the OTS Directors' Responsibilities Guide describing the duties of directors and officers of savings association.

2. As a director of the above-named savings association, I have a legal responsibility and a fiduciary duty to its shareholders and creditors and to the applicable federal deposit insurance funds to administer the savings association's affairs faithfully and to oversee its management. In carrying out my duties and responsibilities, I shall exercise reasonable care and place the interests of the savings association before my own interests. I shall fulfill my duties of loyalty and care to the above-named savings association.

3. I shall diligently and honestly administer the affairs of the savings association, and I shall not knowingly violate, or willingly permit to be violated, any applicable statute or regulation. I shall ensure that I learn of changes in statutes, regulations, and policies of the Office of Thrift Supervision and the Federal Deposit Insurance Corporation or any state to whose jurisdiction my association is subject, which affect my duties, responsibilities, or obligations as a director and affiliated person of the savings association.

4. I shall attend meetings of the board of directors and participate fully on all committees of the board to which I am appointed.

Signature ______________________________
Type Name ______________________________
Mailing Address ______________________________
City ____________________ State ____________________ ZIP Code ____________
Date ____________________

Notary's Affirmation

Sworn to before me and subscribed in my presence this ____ day of ___________, _______.

Notary Public ______________________________
My Commission Expires ______________________________

Business Plan Guidelines

Preparation and Use

The business plan should be an integral part of the management and oversight of a financial institution (institution). It should establish the institution's goals and objectives. It is a written summary of how the business will organize its resources to meet its goals and how the institution will measure progress.

The business plan should be a comprehensive plan, which is the result of in-depth planning by the institution's organizers and management. It should realistically forecast market demand, customer base, competition, and economic conditions. The plan must reflect sound banking principles and demonstrate realistic assessment of risk in light of economic and competitive conditions in the market to be served. An institution with a special purpose or focus (for example, credit card, trust only, cash management, or bankers' bank) should address this special or unique feature in detail in the appropriate sections of the plan.

The business plan should cover three years and provide detailed explanations of actions that are proposed to accomplish the primary functions of the institution. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will have adequate capital to support the risk profile.

For any institution with an Internet or alternative electronic delivery channel, the plan should contain a clear and detailed definition of the market the institution plans to serve and the products and services it will provide through electronic channels. Because the Internet has a potential global market and can reach anyone with Internet access, the selected information on market area and products and services is essential. The marketing plan should explain how the institution would achieve brand recognition.

Confidentiality

Any Applicant desiring confidential treatment of specific portions of the plan and projections must submit the request in writing. The request must discuss the justification for the requested treatment. The Applicant's reasons for requesting confidentiality should specifically demonstrate the harm (for example, loss of its competitive position, invasion of privacy) that would result from public release of information (5 U.S.C. 552 or relevant state law). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." The Applicant should follow the same procedure when requesting confidential treatment for the subsequent filing of supplemental information to the plan.

The Applicant should contact the appropriate regulatory agency for specific instructions regarding requests for confidential treatment. The appropriate regulatory agency will determine whether the information will be treated as confidential and will advise the Applicant of any decision to publicly release information labeled as "Confidential."

BUSINESS PLAN

I. Table of Contents

II. Executive Summary

Describe the highlights of the plan.

III. Description of Business

A. Describe the institution's business and any special market niche, including the products, market, services, and nontraditional activities.

B. If in a holding company structure, discuss the operations of the organization, including a brief detail of the organizational structure and interaction between the institution and its affiliates.

C. Describe the extent, if any, that there are or will be transactions with affiliated entities or persons. Include terms.

D. Discuss the legal form and stock ownership of the institution and any investment in subsidiaries or service corporations.

E. For an operating company, describe the present financial condition and current resources, such as office network, staff, and customer base. Specifically discuss the strengths and weaknesses.

F. Describe the proposed location, office quarters, and any branch structure.

G. Discuss any growth or expansion plans, including additional branches, other offices, mergers, or acquisitions.

IV. Marketing Plan

A marketing plan should provide in detail factual support that the institution has reasonable prospects to achieve the revenue projections, customer volume, and key marketing and income targets. The analysis should be based on the most current data available, and the sources of information should be referenced. This section should contain an in-depth discussion of the major planning assumptions for the market analysis, economic, and competitive components used to develop the plans, objectives, and the basis for the assumptions.

A. Product Strategy

1) List and describe the general terms of the planned products and services, including activities of any subsidiaries. Discuss any plans to engage in any subprime or speculative lending, including plans to originate loans with high loan-to-value ratios.

2) Discuss how the institution will offer products and services over the three years, indicating any variation in the different market areas or distribution channels, and include the time frame for the introduction and the anticipated cost associated with each.

3) Describe the institution's plans to engage in any secondary market/mortgage banking activity, including loan participations. Discuss plans to use forward take-out commitments or engage in loan securitization. Describe any plans to engage in hedging activity to mitigate the risks of this activity. Also, discuss plans to retain recourse and servicing.

4) Describe the primary sources of loans and deposits and the major methods to solicit them. If using brokers or agents, provide full details of the nature and extent of all such activities, including sources, amounts, fees, and any intended tie-in of compensatory arrangements with the broker or agent.

5) Describe any arrangements with e-commerce businesses (for example, links to another's Web site to shop, order, or purchase goods and/or services online).

B. Market Analysis

1) Describe the intended target market and the geographical market area(s).

2) Describe the demographics of the target market population (for example, age, education, and occupation).

3) *For an OTS filing*, discuss in detail any current and/or proposed actions to accomplish the institution's commitment to promote home financing.

C. Economic Component[9]

1) Describe the economic forecast for the three years of the plan. The plan should cover the most likely scenario and discuss possible economic downturns.

2) Indicate any national, regional, or local economic factors that may affect the operations of the institution. Include an analysis of any anticipated changes in the market, the factors influencing those changes, and the effect they will have on the institution.

3) Describe the current economic characteristics of the proposed market(s), for example, size, income, and industry and housing patterns.

4) Based on the economic characteristics described previously, discuss the economic factors that influence the products and services to be offered. A more in-depth discussion is warranted when different types of services are identified for different market areas in the Description of Business section.

[9] If obtained, discuss any independent economic survey or market feasibility study.

(a) §58-5-1, NMSA 1978 requires members of a Board of Directors for a State chartered bank to take an oath pledging to "diligently and honestly administer the affairs of the bank. . ."

(b) §58-1-65 (A), NMSA 1978 "[t]he affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties."

(c) §58-1-66, NMSA 1978. Directors; meetings and duties. This statute provides requirements for meetings of a Board of Directors as well as the multiple subject areas related to bank business that must be examined, approved and reported on by board members at those meetings.

3. Potential for Situation Where the Board of Directors of the Proposed Bank and the City Council of the City of Santa Fe Develop a Conflict Over the Operation of the Bank.

(a) The Feasibility Study does not appear to fully address the potential for a situation where the elected Board of Directors of the proposed Santa Fe Bank and the elected City Council of the City of Santa Fe may reach a future situation where the Board would make a decision(s) in regards to lending, interest rates, bank operations, etc., that the City Council does not support. Likewise, a situation could develop where the City Council would make a request of the bank/board to support a particular project or make a particular loan and the Board declines the request on a determination the project or loan is not in the best interest of the Santa Fe Bank.

(b) In either such hypothetical situation, the City Council could react to the disagreement/denial by taking action to withdraw its funds from the bank (just like any other bank customer.)

(c) The funding structure of the proposed Santa Fe Bank appears to be based heavily on funding from the City of Santa Fe; thus a sudden reduction of funding by the City of Santa Fe could result in immediate jeopardy to the financial security of the bank.

(d) While the current Santa Fe City Council may be completely supportive of the idea/operation of a Santa Fe Bank, there is no guarantee that any future city council (following an election cycle, or even just a change in opinion of a majority of city council members) would continue to deposit City funds with the bank.

III. <u>OPEN MEETINGS / OPEN RECORDS:</u>

Interplay of the New Mexico Open Meetings Act, §10-15-1, NMSA 1978, and the New Mexico Inspection of Public Records Act, §14-2-1, NMSA 1978, with the Operation of a Public Bank.

D. Competitive Analysis

1) Compare and contrast the institution's product strategy with its principal competitors in the target market(s). Include expected results in terms of relative strength, market share, and pricing.

2) Discuss the overall marketing/advertising strategy, including approaches to reach target market through the marketing of brand, products, and services. Outline the specific medium that will be used, including timing and level of advertising efforts.

3) Discuss potential competition in the target market(s).

V. Management Plan — Directors and Officers

A. Provide the number of organizers and/or directors. Provide a list of board committees and a brief explanation of the responsibilities of each committee.

B. Describe the organizational structure and provide an organizational chart, indicating the number of officers and employees. Describe the duties and responsibilities of the senior executive officers. Describe any management committees that are or will be established.

C. Discuss the institution's plans to address management succession, including any management training program or other available resources.

VI. Records, Systems, and Controls

A. Describe the institution's current and/or proposed accounting and internal control systems, indicating any use of electronic processing systems.

B. Describe management's proposed internal audit function. The description should set forth the independence of the department and the scope and frequency of audits. Discuss the experience and education of the audit staff. If external auditors will be used for internal audits, provide similar information for the external auditors.

C. Describe the compliance management programs, addressing independence, scope, frequency, and staff qualifications. Discuss how the institution will respond to consumer complaints.

D. State plans for an annual audit by independent public accountants.

E. Discuss the functions that will be outsourced and what the institution will do in-house.

VII. Financial Management Plan

A. Capital and Earnings

1) Discuss the capital goals and the means to achieve them.

2) Discuss the earnings goals in terms of return on assets, net interest margin, or other profitability measurements, and summarize the strategies to achieve those goals.

3) Discuss the plan for raising capital and for financing growth, with particular emphasis on conformance with regulatory capital requirements.

4) Discuss the adequacy of the proposed capital structure relative to internal and external risks, planned operational and financial assumptions, including technology, branching, and projected organization and operating expenses. Present a thorough justification to support the proposed capital, including any off-balance-sheet activities contemplated.

5) Describe the debt service requirements for any debt that will be issued at the holding company level to capitalize the institution.

6) Discuss the use of options, warrants, and/or other benefits associated with the institution's capital.

7) Summarize the dividend policy.

B. Liquidity and Funds Management

1) Discuss how the institution will identify and measure liquidity risk.

2) Discuss the institution's plan to monitor and control its liquidity risk, including funding sources (deposits, borrowings, securitizations). Include holding company support, if any.

3) Describe any plans to borrow funds from any financial institutions or other sources, including the amount, composition, interest rate, maturity, purpose, and collateral.

4) Discuss the type of investment securities the institution plans to purchase.

C. Sensitivity to Market Risk

1) Discuss the institution's objectives, strategies, and risk tolerance for interest rate risk.

2) Discuss how the institution will identify and measure interest rate risk.

3) Discuss the institution's asset and liability portfolio in terms of sensitivity to interest rate changes and the impact of earnings and capital and net portfolio value.[10] Discuss the risk limits to control interest rate risk.

[10] For OTS filing, see Thrift Bulletin 13a.

4) Describe any plans to use hedging activities (for example, futures, options, interest rate swaps, or other derivative instruments).

D. Credit Risk

1) Discuss how the institution will identify and measure credit risk.

2) Describe the loan review program, addressing independence, scope, frequency, and staff qualifications.

3) Describe the methodology used to determine the allowance for loan and lease losses.

VIII. Monitoring and Revising the Plan

A. Describe how the board of directors will monitor adherence to the business plan.

B. Describe how the board of directors will adjust and amend the plan to accommodate significant or material economic changes.

IX. Alternative Business Strategy (Optional unless your regulator requires)

An alternative business strategy details how an institution will operate under scenarios in which market conditions differ significantly from those projected in this business plan. This alternative business strategy should be realistic about the business risks and incorporate sound management of such risks. This alternative strategy should consider potential adverse scenarios relating to the asset or liability mixes, interest rates, operating expenses, marketing costs, and growth rates. This discussion should include realistic plans for how the bank would access additional capital, if needed, in the future and, if applicable, contingency funding plans that address strategies for managing potential liquidity fluctuations. This plan also should discuss any financial safeguards to offset unexpected costs and remain well capitalized.

Periodically, the institution should update this section, especially as the institution becomes more complex and as industry conditions change.

X. Financial Projections

A. Provide financial information for opening day *pro forma* and quarterly projections for the three years of operations. Also provide annual totals for the Income Statement. The line items in the financial statements should be consistent with the Consolidated Reports of Condition and Income or the Thrift Financial Report (Report)[11] so that projected items may be compared conveniently with actual performance. The following reports should be used:

[11] See FDIC's Web site, http://www.fdic.gov/regulations/resources/call/crinst/callinst.html or http://www.ots.treas.gov (link to TFR form and instructions).

Projected Balance Sheet (Schedule RC or SC)

Projected Income Statement (Schedule RI or SO)
Regulatory Capital Schedule (Schedule RI-A or CCR)

The financial statements should be presented in two ways: (1) showing the dollar amounts, and (2) as a percentage of total assets.

1) Describe in detail all of the assumptions used to prepare the projected statements, including the assumed interest rate scenario for each interest earning asset and interest costing liability over the term of the business plan. Also present a thorough justification to support proposed capital, including any branch expansion and off-balance-sheet activities contemplated.

2) Provide the basis for the assumptions used for noninterest income and noninterest expense. Indicate the amount of lease expense, capital improvements, and furniture, fixtures, and equipment, including systems and equipment upgrades.

3) Describe the assumptions for the start-up costs, volumes, expected returns, and expected time frame to introduce each new product and service.

B. Discuss how the institution used marketing studies or surveys to support the institution's projected growth.

C. Discuss the level of marketing expenses necessary to achieve the projected market share for both loan and deposit products. Assumptions should be consistent with those experienced by other institutions in the target market. Explain any significant variances between the assumptions in the target market.

D. Provide a sensitivity analysis of the financial projections. A sensitivity analysis provides a realistic stress test of the major underlying assumptions used in the business plan and the resultant financial projections. For example, adjust the financials to reflect the effects of adverse changes in the interest rate environment, changes in the asset/liability mix, higher than expected operating expenses, marketing costs, and/or growth rates.

CALL REPORT
FINANCIAL PROJECTIONS

BALANCE SHEET

Assets
Cash and balances due from depository institutions Noninterest-bearing balances and currency and coin Interest-bearing balances
Securities Held-to-maturity securities Available-for-sale securities
Federal funds sold and securities purchased under agreements to resell
Loans and lease financing receivables Construction and land development loans secured by real estate Secured by farmland Revolving, open-end loans secured by 1-4 family residential Other first lien loans secured by 1-4 family residential Other junior lien loans secured by 1-4 family residential Secured by multifamily residential properties Secured by nonfarm nonresidential properties Loans to depository institutions Loans to finance agricultural production and other loans to farmers Commercial and industrial loans Acceptances of other banks Credit card and related plans to individuals Other loans to individuals for household, family and other personal expenditures Obligations (other than securities and leases) of states and political subdivisions in the U.S. All other loans (exclude consumer loans) Lease financing receivables (net of unearned income) Less: Unearned income Allowance for loan and lease losses Total Loans and leases, net of unearned income and allowance
Other Assets Trading assets Premises and fixed assets Other real estate owned Investments in unconsolidated subsidiaries and associated companies Customers' liability to this bank on acceptances outstanding Intangible assets All other assets (describe)
Total Assets

CALL REPORT
FINANCIAL PROJECTIONS

BALANCE SHEET (Continued)

Liabilities
Transaction deposit accounts Demand NOW accounts, ATS accounts, and other interest bearing transaction accounts
Nontransaction Deposit Accounts Money market deposit accounts (MMDAs) Other savings deposits Time deposits of $100,000 or more Time deposits of less than $100,000 Other nontransaction accounts (describe)
Other Liabilities Federal funds purchased and securities sold under agreements to repurchase Demand notes issued to the U.S. Treasury Trading liabilities Borrowed money with remaining maturity of one year or less Borrowed money with remaining maturity of more than one year through three years Borrowed money with remaining maturity of more than three years Bank's liability on acceptances executed and outstanding Subordinated notes and debentures All other liabilities (describe)
Total Liabilities
Equity Capital
Common stock
Surplus
Undivided profits
Other equity capital (describe)
Total Equity

CALL REPORT

FINANCIAL PROJECTIONS

REGULATORY CAPITAL

Total Equity Other Tier 1 Capital (describe)
Total Tier 1 Capital
Allowance for Loan and Lease Losses Other Tier 2 Capital (describe)
Total Tier 1 and Tier 2 Capital
Total Assets
Total Risk Weighted Assets
Capital Ratios
Tier 1 Capital / Total Risk Weighted Assets
Total Tier 1 and Tier 2 Capital/Total Risk Weighted Assets
Tier 1 Capital /Total Assets

ALLOWANCE FOR LOAN AND LEASE LOSSES

Beginning balance
Current quarter's: Recoveries Provision for loan and lease losses Less: Charge-offs
Allowance ending balance

FINANCIAL PROJECTIONS

INCOME STATEMENT

Interest Income
Real estate loans
Installment loans
Credit card loans
Commercial (time and demand) and all other loans
Lease financing receivables
Balances due from depository institutions
Taxable securities issued by states and political subdivisions in the U.S.
Tax-exempt securities issued by states and political subdivisions in the U.S.
U.S. Government and other debt securities
Equity securities
Interest income from trading assets
Federal funds sold and securities purchased under agreements to resell
Other interest income (describe)
Total Interest Income
Interest Expense
Transaction accounts (NOW accounts, ATS accounts, and other)
Money market deposit accounts
Other savings deposits
Time deposits of $100,000 or more
Time deposits of less than $100,000
Federal funds purchased and securities sold under agreements to repurchase
Demand notes issued by the U.S. Treasury, trading liabilities, and other borrowed money
Subordinated notes and debentures
Other interest expense (describe)
Total Interest Income
Net Interest Income
Provision for Loan and Lease Losses
Noninterest income
Service charges on deposit accounts
Other fee income
All other noninterest income
Realized gains (losses) on held-to-maturity securities
Realized gains (losses) on available-for-sale securities
Noninterest expense
Salaries and employee benefit expense
Premises and fixed assets
Other noninterest expense
Income (loss) before income taxes and extraordinary items and other adjustments
Applicable income taxes
Extraordinary items and other adjustments, net of income taxes
Net Income (Loss)
Dividends
Other changes in capital (describe)
Ending Equity Capital

FINANCIAL PROJECTIONS

INTEREST INCOME & INTEREST EXPENSE ASSUMPTIONS

For each quarter	Average Balance	Interest Rate
Real estate loans		
Installment loans		
Credit card loans		
Commercial (time and demand) and all other loans		
Lease financing receivables		
Balances due from depository institutions		
Taxable securities issued by states and political subdivisions in the U.S.		
Tax-exempt securities issued by states and political subdivisions in the U.S.		
U.S. Government and other debt securities		
Equity securities		
Interest income from trading assets		
Federal funds sold and securities purchased under agreements to resell		
Other interest income		

For each quarter	Average Balance	Interest Rate
Transaction accounts (NOW accounts, ATS accounts, and other)		
Money market deposit accounts		
Other savings deposits		
Time deposits of $100,000 or more		
Time deposits of less than $100,000		
Federal funds purchased and securities sold under agreements to repurchase		
Demand notes issued by the U.S. Treasury, trading liabilities, and other borrowed money		
Subordinated notes and debentures		
Other interest expense		

Form 1 – Balance Sheet

The Balance Sheet should be prepared showing each quarter end starting with the most current actual quarter end and projecting each quarter for years 1, 2, and 3. The balance sheet should be presented in two ways: (1) showing dollar amounts, and (2) as a percentage of total assets.

This balance sheet format is consistent with the TFR, but may show less detail if certain line items are not significant. Additional detail may be included, but these items at a minimum, should be shown.

ASSETS	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
Cash and NonInterest-Earning Deposits	110	
Total cash, noninterest earning deposits, and investment securities	10	Use one or more line items to show the amounts and types of investment securities. The line items should provide sufficient detail so that one can conclude that the institution's investment policy objectives are being met. State the amount of securities designated as "held-to-maturity," "available-for-sale," and "trading." Separately state the categories in the balance sheet, or provide a separate schedule or narrative description. The TFR has separate line items for accrued interest receivable -SC 190 and GVAs SC199. These line items are optional for the plan. State whether you will have GVAs for your investment portfolio. If so, provide an explanation.
Mortgage Pool Securities	20	Provide sufficient detail so that one may review and conclude that the institution's investment policy objectives are being met. State the amount of securities designated as "held-to-maturity," "available-for-sale," and "trading." Separately state the categories in the balance sheet, or provide a separate schedule or narrative description. The TFR has separate line items for accrued interest receivable - SC 220 and GVAs SC 227. These line items are optional for the plan. State whether you have GVAs for your mortgage pool securities portfolio. If so, provide an explanation.
Construction 1-4s	230	Construction loans should be reported net of loans in process.
Construction 5+, and NonResidential	235 240	Construction loans should be reported net of loans in process. If the level for each activity is significant, report these line items separately, otherwise combine them.
Permanent 1-4 unit residential loans.	250 253	SC 250 is "closed-end first mortgages and junior liens" and SC 253 is "revolving, open-end loans." These two items may be combined, but report them separately if the level of SC 253 is significant.

ASSETS *(continued)*	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
Permanent 5+, nonresidential, and land loans	256 260 265	If the level of each activity is significant, report these line items separately, otherwise combine them.
Accrued Interest Receivable, and Advances for Taxes and Insurance	272 275	
Allowance for Loan and Leases Losses on Mortgage Loans	283	
Total Mortgage Loans	23	
Commercial Loans	32	(Non-real estate) Provide detail by type of loan if portfolios are significant.
Consumer Loans	34	Provide detail by type of loan if portfolios are significant.
Accrued Interest Receivable	348	
Allowance for Loan and Lease Losses on NonMortgage Loans	357	
Total NonMortgage Loans	30	
REO	40	Report REO net of GVAs
REI	45	Report REI net of GVAs
Office Premises & Equipment	55	
Goodwill and Other Intangible Assets	660	

Form 1 – Balance Sheet

ASSETS *(continued)*	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
All Other assets		Use one or more line items to show the amounts and types of "other assets." The total amount of "other assets" should tie to the sum of TFR items 50, 642, 644, 655, 690, and 699 if those items were reported separately.
Total Assets	SC 60	

LIABILITIES	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
Net deposits	710	
Advances from FHLB	720	
Federal Funds Purchased and Securities Sold Under Agreement to Repurchase	730	
Subordinated Debt (including mandatory convertible securities)	735	
CMOs (including REMICs) issued	740	
Other Mortgage Collateralized Securities Issued	745	
Other Borrowings	760	
Total Borrowings	72	
Other Liabilities		The sum should tie to the sum of TFR line items 75 "other liabilities," 783 "escrows," and 715 "unamortized yield adjustments on deposits," if those items were reported separately

LIABILITIES *(continued)*	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
Total Liabilities	70	
Redeemable Preferred Stock/Minority Interest	799	

CAPITAL	**TFR Item SC**	**COMMENTS** *This column provides brief reference information. Additional information on individual line items is available in the TFR manual.*
Perpetual Preferred Stock	812 814	812 is Cumulative, 814 is Noncumulative. Report these items separately if amount is greater than zero.
Common Stock - Par Value	820	
Paid in Excess of par	830	
Unrealized Losses on Available for Sale Securities	860	
Retained Earnings	880	
Other Components of Equity Capital	890	Describe if amount is different than 0.
Subtotal Equity Capital	80	
Total Liabilities, Redeemable Preferred Stock/ Minority Interest, and Equity Capital	90	

Form 2 – Income Statement

The Income Statement should be prepared beginning with the most current actual quarter, and projected for each quarter for Years 1, 2, and 3. The income statement should be presented in two ways: (1) showing dollar amounts, and (2) as a percentage of average total assets.

INCOME STATEMENT **Show these items at a minimum.**	**TFR Item SO**	**COMMENTS** **Format is consistent with the TFR**
Interest Income		
Deposits/Investment	110	
Mortgage Pool Securities	120	
Mortgage Loans	140	
Commercial Loans	160	
Consumer Loans	170	
Amortization of Deferred Gain/Losses on Asset Hedges	180	
Subtotal: Interest Income	11	
Interest Expense		
Deposits	215	
Advances from FHLB	266	
Subordinated Debentures	230	
Mortgage Collateralized Securities Issued	240	
Other Borrowed Money	260	
Other Interest Expense		Should tie to sum of TFR items SO 215, SO 280, SO 290, minus SO271, if those items were reported separately.
Subtotal Interest Expense	21	
Net Interest Income Before Provision for Losses on IBA	311	
Provision for Losses on IBA	321	
Net Income After Provision for Losses on IBA	331	
NonInterest Income		
Mortgage Loan Servicing Fees	410	
Other Fees and Charges	420	
Other NonInterest Income		Should tie to sum of TFR items SO 430, 461, 465, 467, 475, 477, 485, and 491, if those items were reported separately.
Subtotal NonInterest Income	40	

INCOME STATEMENT Show these items at a minimum *(continued)*	TFR Item SO	COMMENTS Format is consistent with the TFR
NonInterest Expense		
All Personnel Expense	510	
Office Occupancy Expense	530	
Amortization of Goodwill	560	
Other NonInterest Expense		Should tie to sum of TFR items SO 510, 540, 550, 570, and 580, if those items were reported separately.
Subtotal NonInterest Expense	51	
Income (Loss) Before Income Tax	60	
Federal Taxes	710	
State /Local/Other Taxes	720	
Extraordinary Items	811	Net of tax, and cumulative effect of Changes in Acctg Principles
Net Income (Loss)	91	

A forecast of the changes in stockholders' equity should be prepared in a format substantially similar to the format shown here:

Beginning Stockholders Equity Year 1	
Net Income – Year 1	
Cash Dividends Declared	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 1	
Net Income – Year 2	
Cash Dividends	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 2	
Net Income – Year 3	
Cash Dividends	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 3	

Form 4 – Table of Regulatory Capital Levels

This schedule should be prepared beginning with the most current quarter, and projected for each quarter for Years 1, 2, and 3. Provide supporting schedules for each capital level.

STOCKHOLDER'S EQUITY	Dollar Amount	Percent %
Tangible Capital		
Core Capital		
Risk-Based Capital		

A forecast of loan origination levels should be prepared in a format substantially similar to the format here:

	TFR Item	Year 1	Year 2	Year 3
Construction 1-4s	230			
Construction 5+	235			
NonResidential	240			
Permanent 1-4 unit Residential loans.	250 253			
Permanent 5+,	256			
Permanent Nonresidential	260			
Land Loans	265			
Total Mortgage Loans	23			
Commercial Loans (non-real estate)	32			
Consumer Loans	34			

Form 6 – Interest Rate Assumptions for New Production

A forecast of interest rate assumptions should be prepared in a similar format as presented here:

		Year 1				Year 2				Year 3			
		Q1	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**
Construction 1-4s	230												
Construction 5+	235												
NonResidential	240												
Permanent 1-4 unit Residential loans.	250 253												
Permanent 5+,	256												
Permanent Nonresidential	260												
Land Loans	265												
Total Mortgage Loans	23												
Commercial Loans (non-real estate)	32												
Consumer Loans	34												

Appendix 10

Flow Chart for Establishing a Public Bank
Under State Law

FLOW CHART FOR ESTABLISHING A PUBLIC BANK

Prior to any of the below steps being taken, the City will need to adopt one or more Ordinances or Resolutions authorizing and directing the appropriate actions.

STEP ONE

Identify the proposed functions of the Public Bank.

- Direction should come from the City Council and the Task Force
- Deciding which functions the Public Bank should perform will determine the approvals that are needed, and the laws and regulations which will need to be obeyed.

STEP TWO

Create a business plan for the Public Bank.

- The business plan will be necessary for the various applications the City must make to charter the Public Bank.
- The City will need to hire outside professionals – bankers, lawyers, accountants, and other consultants – to create the business plan. Many of the costs will be incurred at this stage.
- The business plan must identify the local need for the Public Bank, its functions, and its initial capital structure.

STEP THREE

Create a Bank Holding Company.

- New Mexico law requires that all banks be owned by bank holding companies, or individuals.
- Identify the individuals who will direct the affairs of the holding company.
- Identify the sources of capital for the holding company.
- Create Articles and By-laws for the holding company. Create a code of conduct for the holding company compliant with applicable laws.

STEP FOUR

Apply for a bank charter.

- Application is to the Financial Institutions Division for state bank charters. It will be helpful to have conversations with FID about legal and other issues prior to submitting any application.
- The Banking Act sets out a detailed procedure for the application, including especially detailed procedures for raising the initial capital of the Public Bank.

- The Public Bank will need Articles and By-laws, distinct from those of the holding company. It will also need a code of conduct for its officers and directors, that complies with applicable federal and state laws.

STEP FIVE

Apply for deposit insurance from the Federal Deposit Insurance Corporation.

- State-chartered banks must be FDIC-insured.
- The FDIC application differs from the FID charter application, and will require considerable additional resources to complete.
- The FDIC gives very detailed, in-depth consideration to public bank applications for insurance. The application will therefore need to be comprehensive and water-tight.

STEP SIX

Establish operations, assuming all approvals are granted.

- Detailed federal regulations govern each and every aspect of a bank's operations, up to an including the purchase or lease of real property and the buildings necessary to house the Public Bank's operations.
- Detailed accounting systems will be needed to comply with federal regulations.
- A detailed program of oversight will be necessary to ensure that the Public Bank's operations are open, and free of any political interference.
- Compliance programs will need to be established to ensure that all operations comply one hundred percent with applicable state and federal law and regulation.

Appendix 11

Federal Regulations Applicable to Public Bank Operations

SELECTION OF FEDERAL REGULATIONS APPLICABLE TO BANKS

The following is a selection of regulations issued by the Federal Reserve, the Federal Deposit Insurance Corporation, and other federal agencies, applicable to banks and banking operations. Regulations are usually known by their title, as "Regulation __". Regulations run from "A" through "YY"; these are likely the regulations most applicable to the Public Bank.

Regulation B	12 C.F.R. § 202. Equal Credit Opportunity. Banks that lend credit cannot discriminate. Provides mandatory guidelines for the evaluation of credit information.
Regulation D	12 C.F.R. § 204. Mandatory minimum reserve requirements.
Regulation H	12 C.F.R. § 208. Governs membership of state-chartered banks in the Federal Reserve System.
Regulation O	12 C.F.R. § 215. Regulates loans to officers, directors, and principal shareholders of banks; an anti-corruption regulation of great significance in the public bank context.
Regulation Q	12 C.F.R. § 217. Sets capital requirements for bank holding companies and state-chartered banks, which differ from the reserve requirements in Regulation D.
Regulation V	12 C.F.R. § 222. Fair credit reporting. Regulates the reporting of credit-affecting transactions.
Regulation Y	12 C.F.R. § 225. Regulates the ownership and operation of bank holding companies, and changes in bank control.
Regulation Z	12 C.F.R. § 226. Implements the Truth in Lending Act. Requires certain methods of computing the cost of credit, reporting credit terms, and other matters relating to the providing of credit to consumers.
Regulation BB	12 C.F.R. § 228. Implements the Community Reinvestment Act, which applies primarily to residential mortgage and commercial lending.