State of New Mexico
OFFICE OF THE STATE AUDITOR

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State Auditor

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December 28, 2010

Stuart Ashman, Cabinet Secretary
NM Department of Cultural Affairs
407 Galisteo Street, Suite 264
Bataan Memorial Building
Santa Fe, NM 87501

Dear Secretary Ashman,

On December 21, 2010, the Office of the State Auditor (Office) received and evaluated the Department of Cultural Affairs' (the Department's) Internal Audit Review of the National Hispanic Cultural Center Foundation (Foundation), that was conducted by Emilio Martinez, Director, Administrative Services Division. The purpose of this letter is to assist the Department in following up with the Foundation regarding the internal audit review findings. Since public funds were involved, the Foundation and the Department have both agreed to work together to complete the corrective action plan described below in a timely manner. I would like to thank you and Clara Apodaca for promptly contacting me regarding this important matter. The Foundation has agreed to respond in writing to DCA regarding each specific corrective action issue.

The Foundation's corrective action plan should address the following issues.

Issue No. 1 – No Signed Copy of the Memorandum of Understanding (MOU)

The internal audit review report indicates that the agreement may not have been consummated since a signed copy of the MOU could not be located by either party.

The internal audit review finding recommendation states: "In future transactions no monies shall be disbursed until the Department has a copy of the MOU signed by both parties and reviewed by the Department's Legal Counsel."

The Office recommends corrective action on the part of the Foundation and the Department including: obtaining a review of the MOU in question by the Department's legal counsel; revising that MOU as recommended by legal counsel; and both parties signing the MOU as soon as possible.

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Issue No. 2 – Money Disbursed Prior to an Agreement

The internal audit review report indicates that payments to the artist started in August 2002, but the related appropriations were not made until 2007 and 2008. The report finding also indicates that the related reimbursements to the Foundation may therefore be unallowable.

The Office recommends that the corrective action plan require the Foundation to provide the Department with a written justification regarding the timing of the expenditures.

Issue No. 3 – Conflict of Interest

The internal audit review report states that an employee of the Foundation also had a contract with the foundation. Transactions with officials and employees and/or businesses owned by officials and employees are generally prohibited.

The Office recommends that the corrective action plan require the Foundation to: (1) work with the Department to determine whether a prohibited transaction has occurred; (2) review its written code of conduct or code of ethics to ensure that this issue is correctly addressed; and (3) monitor compliance with the updated code of conduct or code of ethics.

Issue No. 4 – Unsubstantiated Payments

The internal audit review report states that the Foundation was unable to substantiate a $10,000 payment to "First Video – Fresco." The payment could be unallowable. Good accounting practices require that the Foundation maintain supporting documentation for all payments for a reasonable amount of time.

The Office recommends that the corrective action plan require the Foundation to work with the Department to determine whether the payment was unallowable, and whether the Foundation owes the Department reimbursement for the payment. The Foundation should also implement policies and procedures regarding maintaining supporting documentation for all payments for a reasonable amount of time.

Additional Problems with the Report Noted by the Office

The internal audit review report did not include responses from the Foundation's management to each issue or finding brought up in the report. Therefore, the department should update the internal audit review report to include such responses from the management of the Foundation.

Pursuant to the Audit Act, this Office will continue to monitor progress of corrective action plan and will refer results of the internal audit review to Department's external audit firm for consideration during the Department's annual financial and compliance audit.

I would like to thank you for your cooperation and professionalism. I am confident that this corrective action plan will be successfully completed in a timely manner.

Respectfully,

HECTOR H. BALDERAS
NEW MEXICO STATE AUDITOR

cc: Clara Apodaca, President & CEO, National Hispanic Cultural Center Foundation