

**MEMORANDUM OF AGREEMENT
BETWEEN
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO
AND
THE UNIVERSITY OF NEW MEXICO FOUNDATION, INC.**

The Memorandum of Agreement made on the 11th day of March 1991 between the Regents of the University of New Mexico (the University), a public corporation of the State of New Mexico and the University of New Mexico Foundation, Inc. (the Foundation), a non-profit corporation created by the University for the sole purpose of soliciting, receiving and managing private voluntary support for the benefit of the University, is amended this 30th day of April, 2008 as follows.

Recitals

WHEREAS, the University formally recognizes the Foundation as a separate corporate entity established for the sole purpose of soliciting, receiving, distributing and managing private gifts and donations given for the benefit of the University; and,

WHEREAS, the University further recognizes that the Foundation provides the following services; 1) creates and encourages an opportunity for private individuals and organizations to invest in the support of University programs and services with the assurance that the benefits of these gifts and donations supplement state appropriations to the University; 2) provides a corporate structure for managing private gifts and donations, including endowments and income-producing properties, that do not jeopardize the University's tax-exempt status or create unrelated business tax obligations for the University; 3) provides added assurance to donors that their contributions will be distributed and utilized for the specified purposes; and, 4) provides a medium for alumni and community leaders to participate in and contribute to the strengthening of the University through their participation in the solicitation, management and distribution of private gifts and donations; and,

WHEREAS, it is understood by the University and the Foundation that all gifts and donations received by the Foundation are given for the benefit of the University and, therefore, shall be managed, distributed, and utilized in accordance with policies and procedures established by the University and the Foundation to assure accountability to the donor and to the public that supports the University; and,

WHEREAS, the University has determined that the Foundation shall be the primary organization for overseeing the development, coordination and implementation of the fund-raising activities for the University.

NOW, THEREFORE, it is agreed as follows:

FOUNDATION AGREEMENTS

1.0 ORGANIZATION, FUNCTION AND BUDGET

- 1.1 The Foundation agrees to operate according to its Articles of Incorporation filed June 4, 1979 and Bylaws, as amended on May 5, 2008. Furthermore, the Foundation agrees to organize and operate in such a manner that will retain the Foundation's legal status as a tax-exempt, non-profit organization pursuant to section 501(c)(3) of the Internal Revenue Service Code, or any successor statute. The Foundation agrees that:
 - 1.1.1 The President of the University shall be included as a voting member of the Foundation's Board of Trustees;
 - 1.1.2 The University's Chief Financial Officer shall be included as a voting member of the Foundation's Board of Trustees;
 - 1.1.3 A member of the University of New Mexico Board of Regents shall be included as a voting member of the Foundation's Board of Trustees; and,
 - 1.1.4 No more that 25% of the Foundation's Board of Trustees may be employees, officers or Regents of the University.

- 1.2 The Foundation will have paid staff, including a president who will be responsible for expanding the fundraising activities and operations of the Foundation. Until the Foundation is fully staffed, the University will continue to provide staff to serve the administrative needs of the Foundation in order to conduct its business and fulfill its responsibilities to the University.
 - 1.2.1 The Foundation shall consult with the President of the University to identify the appropriate executive staff for the Foundation, and shall cooperate in the evaluation of the Foundation President. The Foundation President shall report to the Executive Committee of the Foundation.
 - 1.2.2 The Foundation will identify and provide an appropriate benefits package for the Foundation President and other employees it hires, including but not limited to retirement, deferred compensation, and health, dental, vision, disability, and life insurance.

- 1.3 The Foundation agrees to provide solicitation, consultation and other related services in efforts to maximize private gifts and donations from various sources to the University or to the Foundation for the benefit of the University.
- 1.4 The Foundation shall not solicit or accept gifts, grants, conveyances, devices, bequests or otherwise from any source for a use specified by the donor which is inconsistent with the University's goals and policies.
- 1.5 The Foundation will maintain policies and procedures for the review and acceptance of gifts and donations. The acceptance of any gift or donation that requires a matching obligation of the University or creates a future obligation of University resources must first be approved by the University's Chief Financial Officer in accordance with any applicable university policies.
- 1.6 The Foundation agrees to establish and maintain a record of all gifts and donations to the University and affiliated organizations.
- 1.7 The Foundation will not engage in any instructional, research or public service activity sponsored, or participated in, by a University department or individual employee, without prior approval of the President of the University.
- 1.8 The Foundation will be responsible for overseeing the Foundation's staff and operations in consultation with designated University officials. The Foundation will provide a portion of the financial resources for its operation from one or more of the following; the interest earned on the Foundation's agency accounts (see section 2.2), an allocation from the Consolidated Investment Fund (see section 6.3) or from other sources with the approval of the Foundation Board of Trustees and the University's Chief Financial Officer.
- 1.9 The Foundation shall, at all times, maintain adequate insurance coverage, including Trustee and officers liability insurance, property and casualty insurance appropriate to cover property held and managed by the Foundation for the benefit of either the Foundation or the University, and workers compensation insurance. The Foundation may, at the discretion of the Foundation's Board of Trustees, contract for independent "employee dishonesty" coverage.

2.0 MANAGEMENT OF GIFTS AND DONATIONS

- 2.1 The Foundation agrees to deposit all funds received in one or more agency account(s) established by the University for the Foundation within the University general ledger system. Oversight of these funds deposited in the account(s) shall be the responsibility of the Foundation.
- 2.2 All short-term interest earned on the Foundation's agency account(s) within the University, with the exception of endowment income, will be retained by the Foundation. The Foundation may develop policies that would, at the discretion of the Foundation's Board of Trustees, distribute all or any portion of such income to gift funds on deposit with the Foundation. Any such income retained by the Foundation may be used to provide a portion of the financial resources necessary to operate the University's Development Office with the approval of the Foundation's Board of Trustees.
- 2.3 The Foundation agrees to appoint an Investment Committee, as specified in the Addendum to this Agreement, which committee is hereby designated by the Board of Regents of the University as the investment advisory committee required by Section 21-1-38. B(1)(b), NMSA 1978. Pursuant to Section 21-1-38.B(2), the University hereby delegates to the Foundation, acting through its Investment Committee, the authority to manage the investments of both the University funds and Foundation funds placed in the Consolidated Investment Fund. The Consolidated Investment Fund shall be managed in accordance with the Consolidated Investment Fund Endowment Investment Management Policy, as developed, approved and amended by the Foundation and the Board of Regents from time to time, as required by Section 21-1-38.B(1)(c). The details of this delegation of investment management authority are specified in the attached Addendum, which is hereby incorporated into this Agreement. The Foundation hereby accepts this delegation, as specified in the Addendum.
- 2.4 In addition to the endowments currently held or received in the future in the name of the University or the Foundation, the Foundation also agrees to be the custodian and manager of any endowments received by any University affiliated organization. The Foundation shall not co-mingle the funds of such endowments but may co-invest such endowments under the Consolidated Investment Fund Endowment Investment Management Policy.

3.0 DISTRIBUTION AND EXPENDITURE OF FUNDS

- 3.1 The Foundation agrees that no gift funds will be disbursed directly through the Foundation account(s), either in the form of compensation to a University employee or for the purchase of goods and services for any unit

of the University or affiliated organization, unless specifically approved by the University's Chief Financial Officer. The expenditure of gift funds for the benefit of any unit of the University or affiliated organization will be disbursed through the University's general ledger system.

- 3.2 To assure that the donor directive on the use of the gift is followed when disbursed through the University's general ledger system, the Foundation will be responsible for providing the University the appropriate information on donor-directed gift restrictions.
- 3.3 The Foundation agrees to establish a schedule that is mutually agreeable with the University whereby non-endowed gift funds will be transferred to the University to cover the disbursement of non-endowed gift funds by the various recipient University units or affiliated organizations.
- 3.4 The Foundation may directly disburse funds from its agency account(s) with the University for those expenses incurred directly as a result of the Foundation's corporate business. Such expenditures will include, but not be limited to:
 - 3.4.1 Payments to beneficiaries and others pursuant to the terms of life estate gifts.
 - 3.4.2 Management costs for real estate.
 - 3.4.3 Premium payments of life insurance gifts.
 - 3.4.4 Premium payments for corporate insurance policies.
 - 3.4.5 Transfers of income or gifts to the University.
 - 3.4.6 Payment of salaries, insurance policies, benefits, and other administrative costs associated with the employment of staff and operations.

The Foundation shall establish policies for the oversight of all such direct disbursements of funds and appropriate for employment of staff.

4.0 REPORTS AND ACCOUNTING

- 4.1 The Foundation shall provide the University with an annual report that will include a summary of all gifts and donations received and held or distributed during the past year, the performance of the investment management program and the Foundation's operating income and expenses for the fiscal year.
- 4.2 The Foundation shall provide the University with the report of an annual audit performed by an independent certified public accounting firm selected by the Foundation. Any independent certified public accounting

firm selected by the Foundation that is not the same firm selected by the University must agree to provide the necessary audit information for the University to be able to comply with any federally mandated "single audit" report.

- 4.3 The Foundation agrees to provide any information regarding financial operations of the Foundation to the University's internal audit staff upon formal request to the Foundation's Executive Committee.

UNIVERSITY AGREEMENTS

5.0 THE UNIVERSITY'S PRIORITIES AND LONG RANGE OBJECTIVES

- 5.1 In recognition of the philanthropic and investment services provided by the Foundation and to maximize the Foundation's ability to match fund-raising activities with priority needs, the University agrees to provide a clear statement of fund-raising priorities and long range academic objectives. In addition, the University agrees to involve the Foundation as the University continues to develop planning goals.

6.0 BUDGET AND FINANCIAL SUPPORT

- 6.1 The University agrees that the Foundation will be responsible for the development, implementation and oversight of the University's primary fund-raising activities.
- 6.2 The University will provide a portion of the staffing, office and meeting space, computing support and other related services for the Foundation. However, the University and Foundation will expeditiously renegotiate the form and extent of support provided by the University to the Foundation. The staffing level, the recruitment and hiring of staff, the staff compensation and all other personnel matters will be in compliance with general University personnel policies. These policies are not applicable to employees hired by the Foundation.
- 6.3 The University will provide a portion of the financial resources necessary for the operation of the Foundation. The University agrees that an amount equal to a percentage of the market value of the Consolidated Investment Fund (as defined in the addendum to this agreement) may also be allocated to the Foundation for the employment of its own staff and other operating costs. The annual amount of the allocation will be mutually

agreed upon by the University and the Foundation. This allocation will be incorporated into the total operating budget of the University's Development Office.

- 6.4 The University agrees that the Foundation may contract with persons or entities on a temporary consulting basis, as it deems necessary to fulfill its role and responsibilities.
- 6.5 The University agrees to involve the Foundation's Board of Trustees in the selection and evaluation of the key professional staff persons in the University's Development Office.

7.0 UNIVERSITY SUPPORT SERVICES

- 7.1 The University grants the Foundation license to use the name "The University of New Mexico" and any other trademarks of the University in connection with its fund-raising activities.
- 7.2 In addition to the services provided by the University's Development Office, the University agrees to provide the Foundation with certain services for which no separate charges will be assessed. Such services will include, but not be limited to, business, financial, legal and insurance services.
- 7.3 The University shall cooperate with the Foundation in the development of its fund-raising programs and campaigns, including providing information, data, plans, speakers, facilities for meetings on the University campus and such other materials and services as may reasonably be necessary for the successful conduct of fund-raising programs and campaigns. The University, as it deems appropriate and as resources are available, may provide financial support to the Foundation for major fund-raising campaigns.

8.0 UNIVERSITY COMPLIANCE WITH GIFT RESTRICTIONS

- 8.1 As all gifts and income on gift funds is to be disbursed through the University general ledger system, the University agrees to assume the responsibility of monitoring the expenditures or income disbursements from both non-endowed gift accounts and endowed spending accounts to ensure that any and all donor-imposed restrictions are maintained.

JOINT AGREEMENTS

9.0 OPERATIONAL CONSIDERATIONS

- 9.1 The Foundation and the University agree that, at all times and for all purposes of this agreement, the Foundation as an entity, in the performance of this agreement and other activities to be undertaken by the Foundation, shall act in an independent, separate legal capacity and not as an agent of the University. Within the limits and restrictions of the New Mexico Tort Claims Act, Sect. 41-4-1 et. seq. NMSA 1978, each party agrees to be responsible for its own negligent acts or omissions which may occur during the performance of this agreement and which result in claims by individuals or entities not parties to this agreement.
- 9.2 It is mutually understood and agreed any alteration or variation of the terms of the Foundation's Articles of Incorporation or the Bylaws of the Foundation, which affect the ability of the Foundation to carry out its responsibilities under this agreement shall be submitted for approval of the Board of Regents of the University. No amendment to this agreement shall be valid unless made in writing and signed by both parties. No oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof, unless made in writing between both parties, shall be binding on either of the parties.

All official notices required under this agreement shall be given as follows:

Notice to University: Chief Financial Officer
Scholes Hall
University of New Mexico
Albuquerque, NM 87131-3001

Notice to Foundation: President
University of New Mexico Foundation, Inc.
700 Lomas Blvd. NE Suite 108
University of New Mexico
Albuquerque, NM 87131

- 9.3 The Foundation will take appropriate steps to ensure that it does not discriminate against any person because of race, religion, national origin, color, gender, veteran status or sexual orientation. The Foundation will put in place a complaint, investigation and resolution process that meets the requirements established by state and federal law and that will take prompt steps to remedy any discrimination that is found to have occurred.

10.0 TERMINATION

10.1 This agreement may be terminated by either party effective upon written notice to the other party at least sixty (60) days in advance thereof. If for any reason this agreement is terminated or the Foundation is dissolved or liquidated, all accounts of the Foundation shall be transferred to the University or a successor organization(s) designated by a resolution of the Board of Regents on or before the date of termination. In such event, the University or other successor organization will honor to the maximum extent possible the instructions of donors to the Foundation.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed.

The University of New Mexico Foundation, Inc.

by: *Thelma M. Samerici*
Chairman of the Board

04/25/08
date

by: *Michael K. King*
President

4.25.08
date

The Regents of the University of New Mexico

by: *[Signature]*
President of the Board of Regents

5-28-08
date

by: *Jack J. Falvo*
Secretary of the Board of Regents

5-28-
date

This Agreement was approved at a regularly called meeting of the Board of Directors of the University of New Mexico Foundation held on April 25, 2008 by a vote of 30 in favor and none opposed.

This Agreement was approved at a regularly called meeting of the Board of Regents of the University of New Mexico held on April 30, 2008 by a vote of seven in favor and none opposed.