

**RESTATED AND AMENDED
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, as previously amended April 30, 2008, February 27, 2009, and September 25, 2012 (the “MOA” or “Agreement”) between The Board of Regents of the University of New Mexico, a public corporation of the State of New Mexico (the “University”) and The University of New Mexico Foundation, Inc., an independent New Mexico nonprofit corporation organized and operated exclusively for educational, scientific, literary, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Foundation”), is restated and amended as of the date of the last signature below.

Recitals

WHEREAS, the parties recognize that the Foundation is an independent 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 parties intend that this MOA comply with the terms and conditions of NMSA 1978, Section 6-5A-1; and,

WHEREAS, the parties agree that nothing in this MOA is intended to cause the Foundation to qualify as a “public body” under state or federal law, and the parties shall use their best efforts in implementing this MOA to avoid any such result; and

WHEREAS, the University recognizes that the Foundation provides, among other things, 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; 4) provides a medium for alumni, faculty, staff, students, community leaders and others 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 5) otherwise supports the development and outreach programs and initiatives of the University; 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 lead organization for overseeing the development, coordination and implementation of the private fund-raising activities for the University and shall work in collaboration with other organizations within the University engaged in

fundraising and development as deemed appropriate by the University President and President of the Foundation; and,

WHEREAS, the University recognizes its obligation to pay the Foundation a reasonable and sufficient fee for the level of services, including but not limited to development, cultivation, engagement and outreach activities, provided by the Foundation under this Agreement;

NOW, THEREFORE, it is agreed as follows:

FOUNDATION AGREEMENTS

1.0 ORGANIZATION AND OPERATIONS OF THE FOUNDATION

- 1.1 The Foundation shall operate according to its Articles of Incorporation filed June 4, 1979, and all amendments thereto, and its Bylaws dated February 16, 2018, and all amendments thereto.
- 1.2 The Foundation shall organize and operate in such a manner that will retain the Foundation's legal status as an independent tax-exempt, non-profit corporation pursuant to section 501(c)(3) of the Internal Revenue Service Code, or any successor statute.
- 1.3 The Foundation shall be governed by its own independent Board of Trustees. The following University employees, officers or Regents will serve on the Foundation's Board of Trustees (although no more than 25% of the Foundation's Board of Trustees may be employees, officers or Regents of the University):
 - 1.3.1 The University President will serve as a voting member of the Foundation's Board of Trustees and its Executive Committee. The University President may but shall not be required to serve on any of the Foundation Board's committees. Like all Foundation Trustees, the University President may attend any Foundation Board committee meetings.
 - 1.3.2 The University President may appoint up to two Deans of the University of New Mexico to serve as voting members of the Foundation's Board of Trustees.
 - 1.3.3 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.
- 1.4 The President of the Foundation is the chief executive officer and an employee of the Foundation. The Foundation President is hired and employed by the Foundation Board of Trustees. The parties recognize and agree that no employment relationship exists between the Foundation President and the University/University President.

The University President and Foundation President will work as strategic partners in support of the University's mission, fostering a culture of engagement and collaboration between the two organizations to achieve the goals of transparency, accountability, and

effective alignment between the University and Foundation. In recognition of the critical role the Foundation plays in supporting the University and in recognition of the need for a collaborative and effective relationship between the Foundation President and the University President, the University President, in addition to his/her role as a Foundation trustee and member of the Foundation's Executive Committee, will play a prominent role in hiring, setting the development priorities, and assessing the job performance of the Foundation President.

The Foundation President shall report to the University President on a regular basis and may serve on various University leadership groups at the discretion of the University President.

- 1.5 The Foundation will hire and oversee advancement staff to provide solicitation, consultation and other related fundraising, fund management and administrative support to maximize private gifts and donations from various sources to the Foundation for the benefit of the University.
- 1.6 Foundation development staff shall be hired by, employed by and report to their assigned Foundation manager(s). The parties agree that no employment relationship exists between Foundation development staff and the University. However, the parties expect that Foundation development staff and their assigned University Deans, Department Chairs and Executives will work collaboratively to effectively carry out the University's advancement goals and priorities.
- 1.7 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.
- 1.8 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, a refund provision or creates a future obligation of University resources must first be approved by the University's Executive Vice President for Finance & Administration, or his/her equivalent or designee, in accordance with any applicable University policies.
- 1.8 The Foundation agrees to establish and maintain a record of all gifts and donations to the University and its affiliated organizations.
- 1.9 The Foundation will not engage in any instructional, research or public service activity sponsored, or participated in, by a University department or individual employee,
- 1.10 The Foundation shall, at all times, maintain adequate insurance coverage, including directors' 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.

2.0 MANAGEMENT OF GIFTS AND DONATIONS

- 2.1 The Foundation agrees to appoint an Investment Committee, which committee is hereby designated by the Board of Regents of the University as the investment advisory committee required by NMSA 1978, Section 21-1-38(B)(1)(b). 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 (“CIF”). The Consolidated Investment Fund shall be managed in accordance with the Consolidated Investment Fund Investment Policy (“CIF 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). A current copy of the CIF Policy is attached hereto and incorporated herein as **Exhibit A**, and any subsequently modified and approved versions shall be deemed incorporated herein by reference.
- 2.2 Pursuant to NMSA 1978, Section 6-8-10, the Investment Committee will conform to the requirements of the Uniform Prudent Investor Act (NMSA 1978, Sections 45-7-601, *et. seq.*) and the Uniform Prudent Management of Institutional Funds Act (NMSA 1978, Sections 46-9A-1, *et. seq.*).
- 2.2.1 The Investment Committee shall, at least quarterly, select and review the performance of investment managers in the context of predetermined performance standards and shall periodically review and adjust the allocation of funds within various investment categories.
- 2.2.2 On a regular basis, the Investment Committee will review the CIF Policy and recommend revisions, if any, to the Foundation Board of Trustees and the University Board of Regents for approval.
- 2.2.3 The Investment Committee shall be deemed to have met its fiduciary and other legal responsibilities to the University and the Foundation so long as it acts in conformity with the provisions of this Section 2.0 and the CIF Policy.
- 2.3 The University retains the authority to remove some or all of the University’s funds from the CIF and to change or revoke this delegation of responsibility to the Foundation. Any withdrawals from the CIF shall be made on a prorated, unitized basis.
- 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 CIF Policy.

3.0 DISTRIBUTION AND EXPENDITURE OF FUNDS

- 3.1 The University and the Foundation will establish written procedures to transfer funds between the University and the Foundation as required by this Agreement.

- 3.2 In most circumstances, the expenditure of gift funds for the benefit of any unit of the University or University-affiliated organization will be disbursed through the University's general ledger system, and in accordance with University policy and applicable law. In some circumstances, the Foundation may disburse funds directly to an individual or entity to support development activities or other activities that benefit the University, consistent with the terms of this Agreement and applicable law. The Foundation shall be responsible for paying for reasonable expenses to support the development and outreach activities required under this Agreement.
- 3.3 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 and up-to-date information on donor-directed gift restrictions.
- 3.4 All funds that are transferred from the Foundation to a University spending account are subject to all state laws and regulations governing the disbursement and administration of public funds and public property, except to the extent of any specific conditions of the transfer that are acceptable to the University and do not require actions that are punishable as crimes under state law. Donations and grants from private entities made to the Foundation, or made to the University through the Foundation, shall not be considered public funds or public property until dispersed to a University spending account.

4.0 REPORTS AND ACCOUNTING

- 4.1 The Foundation will work with the University President, if requested, to identify information and reports that are needed by various constituencies. At a minimum, following the end of the Foundation's fiscal year, 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 prior fiscal year, the performance of the investment management program and the Foundation's operating income and expenses for the prior fiscal year.
- 4.2 In accordance with NMSA 1978, Section 6-5A-1(B)(4)(a), 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 and shall make the associated working papers from the annual audit available to the University for review upon its written request, for a period of three years after the audit report date. Pursuant to Section 6-5A-1(B)(4)(a), such working papers provided to the University shall exclude any lists of donors or donations. 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 operations of the Foundation to the University's internal audit staff upon formal request to the Foundation's Executive Committee.

- 4.4 The Foundation agrees to include in its reports to the University specification of the consideration that the University receives from the Foundation for any University services provided in support of the Foundation.

UNIVERSITY AGREEMENTS

5.0 UNIVERSITY PRIORITIES AND LONG-RANGE OBJECTIVES

- 5.1 The University agrees that the Foundation will be responsible for the development, implementation and oversight of the University's primary fund-raising activities.
- 5.2 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 the Foundation with a clear statement of its fund-raising priorities and long-range objectives. In addition, the University agrees to confer with the Foundation as the University continues to develop planning goals.
- 5.3 The University President, and other members of University leadership selected by the University President will work with the Foundation leadership to determine fundraising priorities and strategies that are consistent with short-term needs and long-range objectives of the University.
- 5.4 The University will ensure that the job descriptions and evaluation forms for all Deans include fundraising and fundraising metrics.

6.0 BUDGET AND FEE FOR SERVICES

- 6.1 University staff assigned to assist the Foundation in carrying out development functions shall continue to be governed by the policies, procedures, practices and employment privileges of the University.
- 6.2 The University shall pay the Foundation a reasonable and sufficient fee for the level of services, including but not limited to development and outreach activities, provided by the Foundation under this Agreement. The fee for the Foundation's services shall be determined on an annual basis, and paid according to a schedule agreed to by the University President or the President's designee and the Foundation.

7.0 UNIVERSITY SUPPORT SERVICES

- 7.1 The University grants the Foundation a non-exclusive license to use the name "The University of New Mexico" and any other trademarks of the University in connection with its fund-raising activities. The Foundation agrees to abide by all the University's trademark requirements.
- 7.2 The University shall cooperate with the Foundation in the development of fundraising 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 fundraising programs and

campaigns. The University, as it deems appropriate and as resources are available, may pay additional fees to the Foundation to allow the Foundation to fund additional development staff, significant development expenses, and major fundraising campaigns.

8.0 UNIVERSITY COMPLIANCE WITH GIFT RESTRICTIONS

- 8.1 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.
- 8.2 The Department of Internal Audit will periodically audit the University's compliance with such restrictions.

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 New Mexico law, including but not limited to the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, 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 So long as and to the extent permitted by law, the University and the Foundation will treat Foundation records as exempt from the New Mexico Inspection of Public Records Act (NMSA 1978, Sections 14-2-1, *et. seq.*), regardless of whether Foundation records are in the possession of the University or the Foundation.
- 9.3 The Foundation agrees to furnish the University and University Counsel with copies of its Bylaws, and any changes to its Bylaws. 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.
- 9.4 The University President and the Foundation President, or their designees, may enter into operational agreements so long as those agreements are not inconsistent with this MOA, including but not limited to a data use agreements, supplemental fee for service agreements, and treasury operations agreements.

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

Notice to University: University President
 Scholes Hall
 University of New Mexico
 Albuquerque, NM 87131-0001

Notice to Foundation: Foundation President
 University of New Mexico Foundation, Inc.
 700 Lomas Blvd. NE, Suite 108
 University of New Mexico
 Albuquerque, NM 87102

9.5 The Foundation will take appropriate steps to ensure that it does not discriminate against any person because of age, ancestry, color, ethnicity, gender, identity, genetic expression, national origin, physical or mental disability, pregnancy, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation or veteran status. The Foundation will maintain complaint, investigation and resolution processes that meet the requirements established by state and federal law and that will take prompt steps to remedy any discrimination that is found to have occurred.

9.6 This Agreement will be governed by the law of the state of New Mexico.

9.7 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.

10.0 TERMINATION

10.1 This Agreement may be terminated by either party effective upon written notice to the other party at least one hundred and eighty (180) days in advance thereof. If for any reason this Agreement is terminated, or if the Foundation is dissolved, liquidated, or ceases to be a 501(c)(3) organization, 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 an event, the University or other successor organization will honor to the maximum extent possible the instructions of donors to the Foundation.

11.0 TERM AND EFFECTIVE DATE

11.1 This Agreement will become effective on the day the Agreement is signed by all parties and will continue in effect for five (5) years. Unless one or both of the parties provides one-hundred and eighty days written notice that they do not intend to renew this Agreement, it shall automatically renew for additional five-year (5) term(s). Notwithstanding the foregoing, the parties agree that they shall collaboratively review the terms of this Agreement at least every five (5) years to assure that it fully reflects the needs and obligations of the parties.

IN WITNESS HEREOF, consistent with Regent Policy 7.13, the parties hereto have caused this Agreement to be executed.

THE UNIVERSITY OF NEW MEXICO FOUNDATION, INC.

C. Thomas Daulton
By: C. Thomas Daulton (Sep 3, 2025 15:59:27 CDT) _____ Date _____
Chairman of the Board of Trustees

Martin J. S.
By: _____ Date _____
Chief Administrative Officer
of the Board of Trustees

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO

[Signature]
By: _____ 8/19/25 _____
President of the Board of Regents Date

[Signature]
By: _____ 8/19/25 _____
Secretary of the Board of Regents Date

This Agreement was unanimously approved at a regularly called meeting of the Board of Trustees of The University of New Mexico Foundation held on June 6, 2025.

This Agreement was unanimously approved at a regularly called meeting of the Board of Regents of the University of New Mexico held on August 19, 2025.

FINAL CLEAN MOA UNM-UNMF 8-20-25(1)

Final Audit Report

2025-09-03

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By:	Kim Madrid (kimberly.madrid@unmfund.org)
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-  Document created by Kim Madrid (kimberly.madrid@unmfund.org)
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