

**FINAL
APPROVED 07/23/07
AT A MEETING OF THE NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS**

**MEMORANDUM OF UNDERSTANDING
BETWEEN
NEW MEXICO STATE UNIVERSITY FOUNDATION, INC.
AND
NEW MEXICO STATE UNIVERSITY**

Recitals

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is entered into as of this 23 day of July 2007 by and between New Mexico State University Foundation, Inc. (hereinafter "Foundation") and New Mexico State University (hereinafter "University").

New Mexico State University Foundation, Inc. was organized and incorporated August 27, 1959, and has the purpose of stimulating voluntary private financial support from alumni, parents, friends, corporations, foundations and others for the benefit of the University.

The Foundation exists for the purpose of supporting the various missions and priorities of the University, including its community colleges, research facilities, experiment stations and extension offices wherever located, and provide opportunities for students and a margin of University excellence unavailable with state funds.

The Foundation is dedicated to assisting the University by the building of endowments and by addressing, through financial support, the long term academic and other priorities of the University.

The Foundation is a separately incorporated Internal Revenue Code Section 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and fiduciary obligations.

In consideration of the mutual commitments herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Foundation Name, Trademarks, and Logotype

1.1 The University has authorized the use of its name, together with trademarks and logotypes, to the Foundation in order to assist the Foundation in carrying out its mission to help advance the plans and objectives of the University. The Foundation agrees that the continued use of the University name, trademarks, and logotypes must be consistent with the University's policies pertaining to such use, and may be denied if in the sole opinion of the President of the University continued use is detrimental to the University.

2. Foundation's Relationship to the University

2.1 The Foundation is a separately incorporated 501(c)(3) non-profit organization created to raise, manage, and steward private resources to support the various missions of the University, including its community colleges, research stations, extension offices, and affiliated non-profit entities, wherever located. If the bylaws, investment policy, spending policy or gift acceptance policy of the Foundation are amended from time to time, the Foundation shall furnish copies of the amended bylaws, investment policy, spending policy, or gift acceptance policy to the University prior to their adoption.

2.2 The board of directors of the Foundation is responsible for the control and prudent management of all assets of the Foundation and administration of all gifts received by the Foundation consistent with donor intent.

2.3 The Foundation is also responsible for the control and prudent investment of endowment assets (including quasi-endowment and term endowment) received from the University and its other affiliated nonprofit organizations for investment as part of the Foundation's pooled endowment fund. Such assets may be liquidated and the proceeds invested as a part of the Foundation's pooled endowment fund and subjected to the same policies as those endowment funds owned by the Foundation, unless by mutual agreement of the Foundation and the University it is determined that the size and nature of the assets in a particular endowment warrants investment as an individual portfolio distinct and separate from the pooled endowment fund. Such funds may be withdrawn at their then-current market value as of the day of withdrawal by the owning entity (the University or affiliated nonprofit organization) with 90 days prior written notice to the Foundation.

2.4 The board of directors of the Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including the Foundation's expectations of individual board members based upon ethical guidelines and policies.

2.5 The Foundation will annually allocate a portion of its unrestricted funds to a promotional grant to the president of the University. Generally, the promotional grant will be used to enhance both the image and value of the University to its constituents and those members of the local, national and international communities who can assist the University achieve its official educational, research, and service mission and goals. Specifically, the promotional grant can be spent by the president provided the expenditures meet the following criteria: (a) funds spent on entertainment and travel should be reasonable and include only those persons who are important to enhancing the goals of the University, including supporters, potential supporters, regents, administrators, faculty, staff and students, and spouses only when essential to the business at hand; (b) funds must be used in accordance with the expectations of the board of directors of the Foundation, consistent

with the Foundation's fiduciary responsibilities, and within the legal limitations governing spending by charitable organizations, and; (c) the expenditures from this fund shall be limited to the amount budgeted unless specifically authorized by the Foundation executive committee. The audit committee of the Foundation will perform semi-annual reviews of the expenditures pursuant to the promotional grant.

3. University Relationship to Foundation

3.1 The University president is responsible for communicating the University's priorities and long-term plans, as approved by the board of regents, to the Foundation.

3.2 The University recognizes that the Foundation is a private corporation with the responsibility to keep all of its records and data confidential consistent with applicable law. The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records consistent with applicable law.

3.3 The executive director of the Foundation will be the person employed by the University who has primary responsibility for private financial support and development programs for the University. The President of the University shall meet with the Foundation Executive Director periodically to discuss the support and development needs of the University. The Foundation Executive Director will be a member of the University President's cabinet and/or senior administrative team.

3.4 The University shall include the Foundation as an active participant in the strategic planning for the University by means deemed appropriate by the University board of regents which may include attendance by a Foundation representative at open meetings of the board of regents of the University.

3.5 The president of the University shall serve as an ex-officio, non-voting member of the Foundation board and shall assume a prominent role in fund-raising activities.

3.6 In consideration of the services the Foundation provides to the University which are described in this MOU, the University will provide both in-kind and direct support to the Foundation as described herein.

3.7 To the fullest extent permitted by law and by any applicable donor gift documents, all gifts and donations to the University will be managed, invested, reinvested and distributed by and through the Foundation. All persons and corporations desiring to make gifts to or donations for the benefit of the University and its respective campuses will be encouraged to make such gifts or donations in the name of the Foundation for the sole use and benefit of the University.

3.8 The University president will designate an official of the University to serve as a liaison with the Foundation regarding matters relating to the investment of University funds held by the Foundation. That person will be a non-voting participant of the Foundation investment committee and will provide reports to the board of regents as needed to ascertain that Foundation investments are consistent with provisions of applicable laws governing the investment of University funds held by the Foundation and that actions of the Foundation regarding the investment of gift funds and distributions from investment earnings are appropriately for the benefit of the University. The Foundation will provide said person notice of all meetings of the

investment committee and copies of all investment reports and other investment information provided to members of the investment committee, including policies and proposed policies governing investments and distributions from investments.

3.9 The Advancement Office of the University, staffed by the same University personnel as the Foundation, is responsible for receiving, receipting, recording and reporting gifts to the University and to its other affiliated nonprofit organizations that are deposited into University accounts. The University will allow the Foundation to record such gifts in the Foundation's records to provide donors with a more complete record of giving in support of the University. The entity receiving each gift is responsible for administration of the gift consistent with donor intent. Assets may be transferred to the Foundation for investment, subject to the provisions of paragraph 2.3 of this MOU.

4. Foundation Responsibilities

4.1 Fund Raising

4.1.1 - The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.

4.1.2 The Foundation is responsible for planning and executing comprehensive fund-raising and donor acquisition programs in support of the University's mission. These programs include annual giving, major gifts, planned gifts, special projects and campaigns as appropriate.

4.1.3 The Foundation board of directors and executive director will work with the University president to establish appropriate fund raising campaigns and programs and to identify, cultivate and solicit prospects for private gifts.

4.1.4 The Foundation will establish, adhere to, and periodically assess its gift management and acceptance policies. The Foundation specifically agrees that it will not accept any gift for the establishment of new programs at the University without the prior written consent of the president of the University. In addition, the Foundation will not accept any gift that requires annual expenditures by the University to maintain the corpus of the gift without the consent of the university president. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and provide appropriate recognition and stewardship of such gifts.

4.1.5 The University recognizes the Foundation bears major responsibility for fund-raising. University representatives will coordinate fund-raising initiatives including major gift solicitations with the Foundation.

4.1.6 The Foundation shall not accept grants from state or federal agencies, except in special circumstances approved by the University President, which may include matching funds to private contributions that are approved by the Foundation board of directors and the granting governmental agency.

4.1.7 The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

4.2 Asset Management

4.2.1 - The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Management of Institutional Funds Act (UMIFA). In addition, the Foundation will comply with the prudent investor rule as provided in New Mexico statutes.

4.2.2 The Foundation will develop internal control procedures and guidelines for the collection, distribution and expenditure of Foundation funds to assure that the funds are being used for the benefit of the University. Foundation accounting records will be maintained consistent with generally accepted accounting principles applicable to nonprofit foundations and corporations.

4.2.3 The Foundation may receive, hold, manage, invest and disburse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

4.2.4 Pursuant to 2.2.2.10 NMAC, the Foundation shall utilize the same independent accounting firm as the University annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements including management letters unless the Foundation shall receive an exemption from the New Mexico State Auditor. Associated work papers of the audit will be made available to the University for review upon its written request for a period of three years after the audit date.

4.3 University Flexibility

4.3.1 The Foundation will explore opportunities to utilize the Foundation as a vehicle for acquiring assets and engaging in activities for the benefit of the University in an effort to provide optimum flexibility to the University in the exercise of its mission and purpose.

4.3.2 At the request of the University, the Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities including but not limited to purchasing, developing or managing real estate for University expansion, student housing, or retirement communities; such activities are subject to prior approval by the University. It also may hold licensing agreements and other ownership forms for intellectual property, borrow or guarantee debt issued for third parties, or engage in other activities to increase Foundation revenue with no direct connection to a University purpose. Notwithstanding the forgoing, the Foundation will not engage in any activity that is not for the benefit of the University.

4.4 Transfers of Funds From the Foundation to the University

4.4.1 The Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, gift agreements, and donor intent. Any funds or property transferred to the University by the Foundation shall be considered 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.

4.4.2 The Foundation's disbursements on behalf of the University must be reasonable business expenses that support the University, must be consistent with donor intent, and must not conflict with applicable laws or regulations.

4.4.3 When distributing gift funds to the University, the Foundation will disclose any terms, conditions or limitations imposed by donor or legal determination on the gift. The University is responsible for ensuring that the restrictions imposed by the donor have been met.

4.4.4 The University will conduct, and the Foundation shall pay one-half of expenses of annual reviews of gift funds transferred from the Foundation to the University to ensure compliance with donor restrictions unless it is mutually agreed that a specific year's annual review is not required. The Foundation agrees to provide access to its records regarding specific gifts and donor imposed criteria, to support these reviews. The written reports from these reviews will be provided to both the board of regents of the University and the audit committee of the Foundation each year that such annual review is conducted. The fee charged the Foundation shall be agreed upon annually. In the event an agreement cannot be reached, the Foundation shall pay the equivalent amount as paid the previous year.

5. Foundation Funding and Administration

5.1 The board of directors of the Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations and services.

5.2 The Foundation has the right to use a reasonable percentage of annual unrestricted funds, assess fees for services, or impose gift administrative fees to support its operations. The parties by separate agreement shall, from time to time, agree as to the amount of such fee.

5.3 In consideration of the value and benefit both economic and otherwise, which the University obtains from the services of the Foundation as described in this Memorandum of Understanding, the University agrees that it will support the fund raising programs and investment activities of the Foundation on its behalf as hereinafter stated.

5.4 The University agrees to provide necessary employee staff support to the Foundation. All matters relating to personnel, including staffing level, compensation, benefits, and performance evaluation will be decided by the University, except that the Foundation president will annually provide a performance evaluation of its executive director to the president of the University who may consider it as deemed appropriate. The Foundation retains the right to contract directly with persons or entities, as it deems necessary to carry out its functions, such as fund-raising consultants, accountants, attorneys and investment managers.

5.5 The Foundation will reimburse the University for certain salaries and wages of personnel engaged in support of the Foundation and in related fund raising activities. These costs will be agreed upon annually by the board of directors of the Foundation and the president of the University or his designee prior to the beginning of the Foundation's fiscal year.

5.6 The University grants to the Foundation a permit to use office space and office furnishings on the campus of the University as determined from time to time by the parties, in accordance with

University policies. The University will provide utilities (including telephone and internet), World Wide Web and other data processing support, building and grounds maintenance and repairs and property insurance. The University agrees that the Foundation will pay no rental or reimbursement for these facilities and services that are provided in exchange for the Foundation's services and support of the University. In addition, the Foundation may use other appropriate University facilities for its events; event charges for these other facilities shall not be in excess of those normally charged to University units.

5.7 In the event the University provides services to the Foundation to support the Foundation, there shall be a specification of the consideration that the University receives from the Foundation. To the extent that there are provisions herein providing for such support on an ongoing basis pursuant to the terms of this MOU, such consideration is specified herein. For such services not specified herein the parties will agree to the consideration received by the University for any services that the University provides to the Foundation at the time of agreement for the provision of said services.

6. Terms of the Memorandum of Understanding

6.1. This Memorandum of Understanding, made this 23 day of July, 2007, by and between the board of regents of the University and the board of directors of the Foundation supersedes and replaces the entirety of that AGREEMENT between THE BOARD OF REGENTS OF THE NEW MEXICO STATE UNIVERSITY AND THE NEW MEXICO STATE UNIVERSITY FOUNDATION, INC. dated February 11, 1991, the MEMORANDUM OF UNDERSTANDING concerning Restricted Gifts dated June 1, 1993, and the MEMORANDUM OF UNDERSTANDING BETWEEN NEW MEXICO STATE UNIVERSITY AND THE NEW MEXICO STATE UNIVERSITY FOUNDATION, INC., dated August 25, 2005, and is intended to set forth an agreement that will enhance the coordination of their mutual activities.

6.2. To ensure effective achievement of the terms of this MOU, the University and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities. The University and Foundation envision the need to periodically review and update this MOU.

6.3. Either party may, upon 90 days prior written notice to the other, terminate this MOU. Notwithstanding the forgoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written notice from the other party.

6.4. Should the University choose to terminate this MOU, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this MOU, the University may require the Foundation to pay debt it holds on behalf of the Foundation in like manner.

6.5. Consistent with provisions of the Foundation's bylaws and its articles of incorporation, should the Foundation dissolve, the Foundation will transfer its assets and property to the University or its successor to be used for purposes consistent with Sec. 501 (c)(3) of the United States Internal Revenue Code as amended. If the University or its successor institution does not exist at the time of dissolution, the assets of the Foundation will be transferred to another organization exempt from

Federal income taxes under the provision of Sec. 501 (c)(3) of the United States Internal Revenue Code as amended, to be used for educational or scientific purposes as specified in such section. Provided however, that as to specific donor gifts, the donor's intent expressed by the gift documents will be honored in such transfer.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

New Mexico State University
Foundation, Inc.

The Board of Regents of
New Mexico State University

President

President

Date: _____

Date: _____

ATTEST:

ATTEST: