

All items with this cover are confidential and should be delivered only to addressee.

Office of University Advancement  
P.O. Box 3590 / Las Cruces, New Mexico 88003-3590  
Phone (505) 646-1611  
Fax (505) 646-6176  
1-800-342-6678



NMSU Alumni Association  
NMSU Foundation, Inc.  
Office of University Advancement  
Development Office

Date: 5-25-2007

Number of pages, including cover sheet: 12

To: Heath Hausmann

Fax Number: (866) 605-7197

From: Karen Kelley

Phone Number: (505) 646-6176

Fax Number: 505-646-6176

Message: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AGREEMENT

THE BOARD OF REGENTS OF THE NEW MEXICO STATE UNIVERSITY ~D  
THE NEW MEXICO STATE UNIVERSITY FOUNDATION, INC.

This Agreement is made this ~ day of February 1991, by and between the New Mexico State University Foundation, Inc. (the "Foundation") a New Mexico nonprofit corporation, and the Board of Regents of New Mexico State University ("NMSU"), a public corporation of the State of New Mexico.

RECITALS

WHEREAS, the Foundation operates independently from NMSU, but exists for the sole purpose of assisting and supporting NMSU by providing fund-raising services and other assistance to attract private gift funds to enhance NMSU's instructional, research and public service activities and to provide scholarship assistance for students to attend NMSU; and providing assistance in the management and investment of NMSU gift and endowment funds; and

WHEREAS, the Foundation's Articles of Incorporation and Bylaws, provided that the foregoing are the sole purposes for which the Foundation is organized; and

PROPOSED AGREEMENT

WHEREAS, the Foundation is a nonprofit corporation under the laws of the State of New Mexico and is a separate and independent legal entity from NMSU and

WHEREAS, the Foundation is uniquely qualified to assist the fund-raising activities of NMSU and

WHEREAS, NMSU desires the Foundation to continue to solicit, receive, hold, administer and invest for it, gifts made to and for the benefit of NMSU, and NMSU desires to make available to the Foundation assistance to help meet those objectives.

NOW, THEREFORE, it is agreed as

follows: 1. The Foundation agrees:

1.1. To design and implement fund-raising programs in consultation with NMSU for the benefit of NMSU and its various components and to solicit, receive and accept restricted or unrestricted gifts of property, real or personal, financial or otherwise, for the benefit of NMSU. Major fund-raising campaigns shall be approved by the President of NMSU or his designee.

1.2. To administer such gifts according to the terms specified by the donor. If the donor does not specify the terms for which the gift shall be used, the Foundation shall administer the gift for the benefit of NMSU. Unless the terms of a gift creating a permanent endowment or contributing funds to an already existing permanent endowment specify otherwise, the principal amount of all such gifts shall be invested. The distributable

---

PROPOSED AGREEMENT

earnings determined in accordance with the investment policy of the Foundation as may be approved by NMSU from time to time shall be made available to NMSU and its programs.

1.3. To hold, manage, and invest for the benefit of NMSU, money, gifts and permanent endowments belonging to NMSU in accordance with state law, and investment policies adopted by the Foundation and approved by NMSU. The Foundation further agrees to provide NMSU annually with a report concerning its investment policies and the performance and returns received by it upon its investments.

1.4. To inform NMSU monthly of any and all monies, funds and property received and held by the Foundation for the benefit of NMSU. To maintain an accounting system consistent with generally accepted accounting principles applicable to nonprofit foundations and corporations.

1.5. To establish procedures and do all things necessary to retain the Foundation's legal status as a tax-exempt organization pursuant to Section 501(c) (3) of the Internal Revenue Code or any successor statute.

1.6. To manage the investments of the Foundation subject to applicable legal principles and any applicable laws governing investments by charitable foundations and to employ such professional advisors in connection with such investment management as appears prudent.

PROPOSED AGREEMENT

1.7. To obtain suitable insurance for the Foundation, its Board of Directors and volunteers.

1.8. To obtain and furnish annually to NMSU an independent financial audit of its operation prepared by an accounting firm selected by the Foundation.

2. NMSU hereby recognizes the value and benefit both economic and otherwise, which it obtains from the above described services performed by the Foundation, and in consideration of those services to be performed by the Foundation, NMSU agrees that it will support the fund-raising program and investment activities of the Foundation on its behalf, in the following ways:

2.1. NMSU agrees to provide employee staff support to the Foundation. The staffing level, compensation and benefits of employees, and other personnel matters shall be decided by NMSU.

These NMSU employees will maintain donor records and perform administrative and staff support functions for the operations and the fund-raising activities of the Foundation. The Foundation retains the right to contract directly with such persons or entities as it deems necessary to carry out its functions, such as fund-raising consultants, accountants, attorneys and investment managers.

2.2. NMSU agrees to continue to provide other support necessary for the Foundation's operation at levels determined appropriate by NMSU in consultation with the Board of Directors of

-----  
PROPOSED AGREEMENT

the Foundation, including data processing, some consumable office supplies, telephone service, and routine business and financial services.

2.3. NMSU grants to the Foundation a permit to use office space and office furnishings on the campus of the University as NMSU determines appropriate from time to time. Utilities, maintenance and repairs, and property insurance will be provided by NMSU. The Foundation may use appropriate NMSU facilities for its events in accordance with NMSU's policies. No additional rental shall be paid by the Foundation for this permit.

2.4. NMSU agrees to authorize and encourage its employees to solicit gifts to the Foundation for the benefit of NMSU and authorizes the Foundation to solicit and accept gifts in the Foundation's name for the benefit of NMSU in accordance with Foundation policies and guidelines approved by NMSU.

3. NMSU and the Foundation agree that gifts to the Foundation must be administered according to the terms specified by the donors. Unrestricted gifts received by the Foundation may be restricted to use(s) designated by the Foundation for the benefit of NMSU. Once funds have been deposited or transferred to NMSU, the NMSU gift income spending policy will apply to the use of those funds.

4. NMSU recognizes the Foundation's need to and agrees that the Foundation may assess a reasonable service charge against the

earnings of the endowment pool and retain the proceeds for the purpose of supporting the Foundation's costs in carrying out the fund-raising programs and activities and support functions of the Foundation.

5. Recognizing that the funds and money held by the Foundation would include not only money and property which have been given to the Foundation by donors for the benefit of NMSU, but also gifts and endowments which have been given to NMSU, and then placed with the Foundation by NMSU for investment and management, NMSU and the Foundation agree:

5.1. The Foundation agrees that it will maintain accurate records of its donors and all gifts and property received by it for the benefit of NMSU and accurate records of all property and funds placed with it for investment and management by NMSU and

5.2. The Foundation agrees that it will develop internal control procedures and guidelines for the collection, distribution and expenditure of Foundation funds to assure that such funds are being used for the benefit of NMSU and its programs and services and that such uses and expenditures are not in violation of any state or federal laws or regulations, which control procedures shall be approved by NMSU.

5.3. The Foundation agrees to obtain the approval of the President of NMSU or his designee before accepting any gifts for purposes of establishing any new programs at NMSU or before

accepting any gift with any restrictive terms or conditions not in accordance with the Foundation and/or NMSU's gift policies. The Foundation further agrees that it will advise donors that a restricted gift for purposes of establishing any new or additional programs at NMSU, or any gift of property in kind not in accordance with the NMSU and Foundation gift policies, may not be accepted without the approval of the Executive Committee of the Foundation and the approval of NMSU.

5.4. NMSU and the Foundation agree that once funds belonging to or in the possession of the Foundation, are transferred to NMSU, including its various departments and programs, that it will be NMSU's responsibility to assure that such funds are properly expended in accordance with donor's intent, NMSU guidelines and procedures and state and federal laws and regulations.

5.5. The Foundation agrees to abide by NMSU's established guidelines for the identification of **funds received** Foundation belonging to NMSU, and funds received by NMSU belonging to the Foundation. The Foundation further agrees that it shall comply with all guidelines developed by NMSU for purposes of determining the proper identity of the recipient of such funds and gifts including appropriate documentation upon which each may rely as reflecting the intention of the donor as to the identity of the intended recipient and the purpose and restrictions intended to be imposed by the donor.

PROPOSED AGREEMENT

5.6. NMSU and the Foundation agree to establish a common or similar format for restricted gift and endowment agreements that each will use for accepting restricted gifts and endowments to the extent practicable.

6. The Foundation is hereby licensed to use the name "New Mexico state University" and other trademarks and logos of NMSU in connection with its fund-raising activities. The Foundation acknowledges that this is a nonexclusive license. The Foundation's use of such trademarks, tradenames and logos, must be consistent with NMSU's policies pertaining to such use.

7. The Foundation agrees to comply with any NMSU policies regarding NMSU affiliated organizations as may be adopted by the Board of Regents and agreed to by the Executive Committee of the Foundation.

The Foundation agrees that it will submit to NMSU for any amendments to its Articles of Incorporation or

8 . approval, Bylaws.

9. The term of this Agreement shall be indefinite, subject to amendment by mutual agreement in writing of the parties. Ei ther party may terminate this agreement with ninety (90) days written notice to the other party. In the event of termination by either party, the Foundation as directed by NMSU at that time, shall continue to administer the funds and property of NMSU held by it for management and investment in accordance with the instructions

and policies of NMSU or in the alternative, at the direction of NMSU, provide for an orderly transfer of such assets and the responsibility for the management thereof, to NMSU or its designee. In the event of a termination of this agreement, under circumstances where the Foundation has not lost its designation as a section 501(c) (3) organization for the support of NMSU, the Foundation shall continue to hold and administer its assets and endowments and trusts in accordance with the state law, Internal Revenue Code, and the donor's intentions as expressed in the gift agreement, endowments and trusts documents whereby such assets and property was transferred and/ or donated to or placed with the Foundation all for the benefit of NMSU in accordance with the terms and responsibilities created by the gift instrument and/or supporting documentation. The Foundation, where specifically designated as trustee or donee by appropriate written instrument, shall continue to administer such **accordance** with its responsibilities under such instrument for the benefit of NMSU, so long as the Foundation remains a qualified Internal Revenue Code section 501(C) (3) organization for the benefit and support of NMSU.

10. The parties acknowledge and recognize that the ability of NMSU to fulfill its obligations under this agreement and as created pursuant to the terms of paragraph 2 hereinabove, are subject to the availability of legislative appropriations of funds

PROPOSED AGREEMENT

to meet the expenses of NMSU; and to budget authorizations by the Board of Regents of NMSU for such purposes.

11. The Foundation agrees that its primary administrative officer now referred to as its executive secretary in its Bylaws shall be an officer and employee of NMSU who shall have been mutually agreed upon by the Foundation and NMSU, to serve as the primary administrative officer of the Foundation.

12. Except for travel reimbursements for actual and necessary travel and other expenses incurred for authorized NMSU or Foundation purposes, all consulting fees, loans, perquisites, or other benefits provided to or on behalf of any NMSU employee, other than a student employed by the Foundation, shall be approved by the President of NMSU or his designee. Benefits, perquisites, fees to or on behalf of non-NMSU employees shall be determined in the sole discretion of Foundation, and shall be reported annually to the President or his designee.

13. Time is of the essence in the performance of this agreement. This agreement shall be interpreted according to the laws of the state of New Mexico. All prior policies and guidelines of the Foundation which have been approved by NMSU, are hereby considered to be incorporated into this agreement except as specifically contradicted by the terms of this agreement. It is further agreed that all future agreements between NMSU and the Foundation, including any amendments to this agreement, shall be

in writing and shall not be effective until the same have been approved by NMSU or its designee and by the Foundation acting by and through its Board of Directors or Executive Committee.

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

New Mexico state University  
Foundation, Inc.

The Board of Regents of the  
New Mexico state University

By

By

This Agreement was approved at a regular called meeting of the Board of Directors of New Mexico State University Foundation, Inc. held on February 11, 1991 by a vote of 4 in favor and none opposed.

This Agreement was approved at a regular called meeting of the Board of Regents of New Mexico State University held on February 28, 1991, by a vote of three in favor and none opposed.