

25-2 Agreement: The Board of Regents and The Eastern New Mexico University Foundation

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Every four years at the homecoming meeting, this Agreement is renewed between the Eastern New Mexico University Foundation, Inc. (the Foundation), a New Mexico nonprofit corporation, and the Board of Regents of Eastern New Mexico University (the University), a public corporation of the state of New Mexico. This renewal is documented in a Memorandum of Understanding between the parties of the agreement.

Recitals

WHEREAS, the Foundation was created to support and enhance the goals and the objectives of the University, the Foundation shall assist in bringing about closer relationships, better understanding and greater acceptance between the institution and the public;

WHEREAS, the Foundation is a 501(c)3 corporation incorporated under the laws of the state of New Mexico and is a separate and independent legal entity from the University;

WHEREAS, the Foundation is organized 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 its fiduciary responsibilities;

WHEREAS, the Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws which clearly addresses its Board's fiduciary responsibilities, including expectations of individual board members based upon Foundation Mission, Bylaws and policies established by the ENMU Foundation Board;

WHEREAS, the University recognizes the Foundation as the primary organization for the development and coordination of fund-raising activities for the University;

WHEREAS, the University further recognizes that the Foundation provides the following services: (1) creates and encourages the 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 shall supplement and shall not be taken as credit for state appropriations to the University; (2) provides a corporate structure for managing private gifts and donations, including endowments and income-producing properties, which does not jeopardize the University's or Foundation's tax-exempt status or create unrelated business tax obligations for the University; (3) provides assurance to donors that their contributions shall be distributed and utilized for the specified purposes of the donor and (4) provides a means for University alumni and friends of the University 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;

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, therefore, shall be managed, distributed and utilized in accordance with policies and procedures established by the Foundation to

assure accountability to the donor and to the public supporting the University, and to comply with all applicable laws of the United States and the state of New Mexico and

WHEREAS, the Foundation may earmark a portion of its unrestricted funds to its operations or to a discretionary fund for the Portales campus presidents of the University and will reimburse appropriate presidential expenses in compliance with state law and university policies;

WHEREAS, the University desires that the Foundation continue to provide the support set forth above and the University desires to make available to the Foundation such support necessary to meet these objectives;

NOW, THEREFORE, it is mutually agreed as follows:

- 1. Independence of Foundation.** The Foundation and 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. Each party agrees to be responsible for its own negligent acts or omissions which may occur during the performance of this Agreement and result in claims by individuals or entities not parties to this Agreement.
- 2. University Priorities and Long-Range Objectives.** In recognition of the philanthropic and investment services provided by the Foundation, the University agrees to provide the following to the Foundation in support of its responsibilities. The University shall provide a clear set of fund-raising priorities and long-range academic objectives. The University recognizes that the Foundation needs a clear statement of University long-range goals and academic objectives in order to match the fund-raising activities with priority needs. The University, therefore, agrees to communicate such information and to involve the Foundation as the University continues to develop planning goals.
- 3. University Staff Support.**
 - A. In consideration for Foundation services, the University shall provide employee staff support to the Foundation in a University organizational unit entitled the Office of Development. The staffing level, recruitment and hiring, compensation and other personnel matters shall be in compliance with the general University personnel management policies and decided in consultation with the Foundation. These University employees shall assist in maintaining donor records and assist in the fund-raising activity of the Foundation.
 - B. For consideration received, the University agrees to continue to provide other support necessary for the Foundation's operation at levels determined appropriate by the University in consultation with the Board of Directors of the Foundation, including data processing, consumable office supplies, telephone service and routine business and financial services, such as purchasing, accounting, auditing, duplicating, printing, mail services, travel and per diem.
 - C. The University agrees that the Foundation may contract with persons and entities, as it deems necessary to fulfill its role and responsibilities.
 - D. The University recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential consistent with New Mexico law. The University shall

establish and enforce policies, which support the Foundation's ability to respect the privacy and confidentiality of donor records.

4. **University Space.** The University may, when appropriate, seek reimbursement from the Foundation for costs incurred in providing suitable office space and office furnishings for use of the Foundation and the Office of Development employees. Utilities, maintenance and repairs and property shall be provided by the University. The Foundation may use other appropriate University facilities for its events in accordance with the University's facilities use policy.
5. **University Fund-Raising Support.** The University shall cooperate with the Foundation in the development of its fund-raising programs and campaigns, including providing information; data; plans; speakers, including the president of the University; facilities for meetings on the University campus and such other materials and services as may be reasonably 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.
6. **Foundation's Organization and General Function.**
 - A. The Foundation shall operate according to its Articles of Incorporation and Bylaws, as amended from time to time, and shall establish appropriate policy and 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.
 - B. The Foundation may organize staff as it deems appropriate to conduct its business and fulfill its responsibilities to the University, and agrees that the Portales campus president and the ENMU System chief financial officer shall be designated as ex-officio members of the Foundation Board of Directors.
 - C. 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.
 - D. The Foundation shall not solicit or accept gifts, grants, conveyance, devices, bequests or otherwise from any source for a use specified by the donor which is inconsistent with the University's goals and policies.
 - E. The Foundation shall maintain policies and procedures for the review and acceptance of gifts and donations. The acceptance of any gift or donation requiring an obligation of the University or creating a future obligation of University resources must first be approved by the University.
 - F. The Foundation shall assist in maintaining the integrity of donor records in cooperation with the University's Office of Development. The Foundation agrees to assist and support those designated employees engaged in gathering data, data entry and maintenance of donor records, including those engaged in recording gifts made directly to the University.
 - G. The Foundation and the University shall administer all gifts and donations according to the terms specified by the donor and pursuant to the Bylaws of the Foundation and the policies of the University.

- H. The Foundation shall maintain an accounting system consistent with generally accepted governmental accounting principles.

7. Management of Gifts and Donations.

- A. The Foundation agrees to manage all gifts and donations in accordance with all applicable federal and state laws including the Uniform Prudent Investor Act, the Uniform Management of Institutional Funds Act and the "prudent man" standard set forth in NMSA 1978, § 6-8-10. The Foundation shall adopt and review, as necessary, an Investment and Disbursement Policy and such other policies as may be necessary or prudent.
- B. The University agrees to manage all gifts and donations in accordance with the University's investment management policies approved by the Board of Regents and in accordance with the "prudent man" standard set forth in NMSA 1978, § 6-8-10.
- C. The Foundation may establish separate accounts at the discretion of its Board of Directors. Oversight of these funds deposited in the account(s) shall be the responsibility of the Foundation. All interest income earned in such account(s) shall be allocated to the Foundation.
- D. As good stewards of its donors' contributions, cash gifts received by the Foundation shall be prudently managed and/or invested until the funds are transferred to the appropriate fund designated by the donor. All gifts and contributions cash or otherwise, shall be handled pursuant to the ENMU Foundation's Investment and Disbursement Policies.
- E. The Foundation will provide investment management oversight of funds held by the Foundation or delegated to the Foundation. The Foundation shall not co-mingle these funds but may co-invest them with the objective of maximizing investment return and minimizing investment management costs. Distribution of income from investment of the Foundation funds shall be made in accordance with the Foundation's investment management policies and with the expectations of the donor or other affiliated organization.
- F. The Foundation may retain such professional services, as it deems appropriate for the management and investment performance of the endowments.

8. Distribution of Funds.

- A. The Foundation agrees, in consultation with the University, to establish a schedule for transferring funds received by the Foundation to the University.
- B. The Foundation may retain any investment income earned on funds on deposit in account(s) in order to offset reasonable operating expense. The Foundation's disbursements on behalf of the University must be reasonable business expenses which support the University, are consistent with donor's intent, and do not conflict with the law. The Foundation has the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift taxes, to support its operations. Foundation agrees to provide to the University an annual budget.
- C. The Foundation agrees that no funds shall be disbursed directly on behalf of any unit of the University, either in the form of compensation to a University employee or for the purchase of goods and services for a University organization, unless specifically approved by the president

of the University or the president's designee. All such funds shall be transferred to a University account and subsequently disbursed in accordance with donor direction and University policies and procedures.

- D. The Foundation may directly disburse funds maintained by the Foundation for those expenses incurred directly by the Foundation, such as, but not limited to, payments to beneficiaries and others pursuant to the terms of life estate gifts, management costs for real estate, premium payments of life insurance gifts, transfers of income or assets to the University. The Foundation is expected to follow appropriate procedures in the disbursement of funds and the procurement of services. The Foundation shall establish policies for the oversight of all disbursements of funds directly by the Foundation.
- E. Any funds or property transferred to the University shall be subject to all state laws and regulations governing the disbursement and administration of public funds and public property.

9. Reports and Accounting.

- A. The Foundation shall provide the University with an annual report including 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.
- B. The Foundation shall present to the University an independent financial audit of its operations annually according to generally accepted governmental auditing standards by a reputable accounting firm. Any independent certified public accounting firm selected by the Foundation which is not the same firm selected by the University and approved by the New Mexico State Auditor must agree to provide the necessary audit information for the University to be able to comply with any federally mandated "single audit" report.
- C. The Foundation agrees to provide any information regarding the financial operations of the Foundation to the University's internal audit staff upon formal request to the Foundation's Executive Committee.
- D. The Foundation shall obtain suitable insurance for the Foundation's Board of Directors, volunteers and for all property held and managed by the Foundation for the University as determined necessary. The Foundation shall require that each of its employees, if any, be bonded.

10. License. The Foundation is hereby licensed to use the name "Eastern New Mexico University" and other trademarks of the University in connection with its fund-raising and other activities. This is a nonexclusive license which is subject to regulation by the University.

11. Other Terms and Conditions.

- A. The term of the Agreement shall be for a period of four (4) years, subject to termination or amendment by mutual agreement of the parties. If 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 the event of dissolution of the Foundation, the University or other successor

organizations of the Foundation shall honor to the maximum extent possible the instructions of donors to the Foundation.

- B. At all times, the Foundation shall provide the University current copies of the Foundation's Articles of Incorporation and Bylaws on file with the New Mexico Public Regulation Commission. It is mutually understood and agreed that any substitution or amendment of the terms of the Foundation's Articles of Incorporation or Bylaws shall be submitted immediately for the review of the Board of Regents of the University. No oral understandings or agreements not incorporated herein, and no alterations, variations or amendments of the terms of this Agreement, unless made in writing and signed by both parties, shall be binding on either of the parties.
- C. All official notices required under this Agreement shall be given as follows:
 - Notice to University: ENMU System chief financial officer
Eastern New Mexico University
Campus Station #4
Portales, NM 88130
 - Notice to Foundation: President and Executive Director
Eastern New Mexico University Foundation, Inc.
Eastern New Mexico University
Campus Station #8
Portales, NM 88130
- D. This Agreement is subject to the availability of Legislative appropriations to meet the expenses of the University with such funds and to budget authorization by the Board of Regents of the University.

Approved by Board of Regents on November 1, 1996, and
Approved by the Friends of Eastern Foundation on January 28, 1997.
Amendments approved by the ENMU Foundation and Board of Regents on May 12, 2006.
Agreement affirmed by the ENMU Foundation and by the Board of Regents, April 27, 2010.
Agreement affirmed by the ENMU Foundation and by the Board of Regents, September 26, 2014.
Agreement affirmed by the ENMU Foundation and by the Board of Regents, October 12, 2018.
Amendments approved by the ENMU Foundation and Board of Regents, April 19, 2019.