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New Mexico State University Foundation, Inc.

Collaboration Agreement

Collaboration Agreement

This Agreement between the New Mexico State University Foundation, Inc. ("*Foundation*") and the Regents of New Mexico State University ("*NMSU*") (each, a "*Party*" and collectively, the "*Parties*"), takes effect on February 2, 2021 ("*Effective Date*").

Background

- The Foundation is an independent, nonprofit corporation, as further described in Exhibit A (attached and incorporated into this Agreement).
- NMSU is a public land-grant higher-educational institution that:
 - has generally delegated its authority to its chancellor (the "*Chancellor*");
 - has current operations that include an Office of University Advancement ("*OUA*"); and
 - has the ultimate responsibility for governing NMSU, including responsibility for the employment, compensation, and evaluation of the Chancellor and all other NMSU employees.
- The Foundation recognizes that its role is to seek gift support for the priorities established by NMSU, in consultation with the Foundation, and to further support NMSU as set forth in the Foundation's Articles of Incorporation and Bylaws.
- NMSU desires to engage the Foundation to provide expertise, advice, coordination, assistance, and other services to enhance fundraising and development for all related areas of NMSU, recognizing the many benefits that the Foundation provides to NMSU.
- The Foundation desires under this Agreement to strengthen and clearly define its relationship with NMSU.
- The Parties understand that:
 - it is in their mutual best interest to work closely together to achieve success in securing significant philanthropic support for NMSU;
 - a need exists for competitive compensation to reward sustained fundraising success because of the Foundation's unique challenges in competing in relevant markets for fundraising and administrative talent;
 - NMSU currently assigns certain of its employees to duties on behalf of both the Foundation and the OUA ("*Jointly-Assigned EEs*")
 - a need remains for the Parties further to discuss and clarify their respective roles and duties with respect to any gift whose circumstances the Parties determine to require special handling and disposition.
- The Parties intend under the Agreement to:
 - make formal NMSU's designation of the Foundation as the only organization authorized to seek, receive, and manage gifts on behalf of NMSU;
 - coordinate their mutual activities in a manner that promotes and supports the educational, research, and service missions of NMSU; and

- establish a regionally-competitive compensation arrangement that includes incentive compensation opportunities for key Foundation employees.
- The Parties envision that once the Foundation becomes financially self-sustaining, the Parties will establish a separate transitional arrangement under which – to the extent lawful – some Jointly-Assigned EEs will become employed solely by the Foundation.

Agreement

The Parties agree as follows:

I. Authorization.

A. Definitions.

1. *“Bequest”* means gifts that are made as part of a will, trust, beneficiary designation or other planned giving vehicle.
2. *“Endowment”* means an aggregation of assets invested by the Foundation to support NMSU’s mission in perpetuity.
3. *“Gift”* means a charitable donation of cash, securities, real estate, goods, or services made to a nonprofit organization to help accomplish its mission. Gift includes further any corporate or private grant to which no contractual deliverable applies.

B. Exclusivity. NMSU grants to the Foundation an exclusive right to:

1. seek, receive, and manage all types of Gifts and bequests on behalf of NMSU; and
2. act as an investing agent for any Endowment or bequest to NMSU.

C. NMSU Role. NMSU must take any step or action that is reasonably necessary and appropriate to support the Foundation's role as the exclusive organization authorized to seek, receive, and manage Gifts and bequests on behalf of NMSU.

II. Foundation Duties.

A. Definitions.

1. *“Board”* means the Foundation’s governing board.
2. *“CBA”* means NMSU’s then-current collective bargaining agreement with the American Federation of State, County and Municipal Employees Local 2393 or its successor entity.
3. *“Donation”* means any inter vivos (*between living people*) or testamentary Gift or bequest to NMSU (or any of its divisions, units, colleges, and departments) of cash, securities, real estate or other negotiable instruments received under the Agreement.
4. *“Employment Action”* means hiring, assessment, termination, search, compensation or goal setting respect to an employee.
5. *“Executive Committee”* means the Board’s executive committee.

6. *“Foundation President”* means an individual whom NMSU employs as its own Vice President of University Advancement with duties including, without limitation:
 - a. overseeing NMSU’s alumni association; and
 - b. as Loaned Personnel (defined below), serving as President of the Foundation.
 7. *“Law”* means each applicable state or federal statute, regulation or common-law provision.
 8. *“Loaned Personnel”* means each employee whom NMSU supplies to the Foundation for this Agreement’s purposes.
 9. *“Site”* means a NMSU department, college or unit to which the Foundation has assigned Loaned Personnel.
- B. Personnel Coordination with NMSU. The Parties understand that close working relationships are required between NMSU and Loaned Personnel.
1. *Joint Oversight of Applicable Workforce.* The Parties must ensure that the Chancellor and the Board’s chair and Executive Committee are included as prominent participants in discussion and decision making regarding any Employment Action of:
 - a. the Foundation President; or
 - b. Loaned Personnel whom the Foundation has assigned to a Site.
 2. *Human Resources.* The Foundation has a right to:
 - a. use NMSU’s Human Resources Services office to administer any Employment Action for Loaned Personnel so long as that arrangement is mutually beneficial to both Parties;
 - b. pursue any other human resource management option that the Foundation considers to be more cost efficient or more effective in recruiting and retaining qualified staff, subject to Law; and
 - c. contract directly with any person or entity that the Foundation considers necessary to carry out its functions, such as any fund-raising consultant, accountant, attorney or investment manager.
 3. *Collective Bargaining Aspects.* The Parties reserve a right to renegotiate this Agreement’s Loaned Personnel arrangement upon any significant CBA modification that the Foundation considers negatively to impact this Agreement’s objectives.
- C. Fundraising. The Foundation is responsible for planning and implementing comprehensive fundraising and donor-acquisition programs in support of any opportunity or priority that NMSU identifies. The Foundation must establish appropriate asset allocation, distribution, and spending policies consistent with Law.
- D. Donations. The Foundation must cause any acceptance of a Donation to be evidenced by a deposit or transfer of the Donation proceeds into a Foundation account. The Parties

consider any Donation that the Foundation accepts to have been transferred by NMSU to the Foundation for use consistent with each donor's intent, with no further action or approval required by NMSU.

- E. Policy Compliance. The Foundation must abide by each applicable NMSU regulation relative to fundraising on behalf of NMSU to the extent permitted by Law and the Foundation's governing documents.

III. **Financial Support**. "*Services*" means advancement services that the Foundation provides including, but not limited to, those enumerated in this Agreement.

- A. NMSU Support. As a beneficiary of the Gift funds raised by the Foundation, NMSU acknowledges its responsibility to support the work of the Foundation with both active involvement of NMSU leaders and financial support.

- 1. *Compensation*. In exchange for Services, NMSU must provide to the Foundation fair and reasonable payment and in-kind support according to an Advancement Services Arrangement as set forth in Exhibit B (attached and incorporated into the Agreement).
- 2. *Changed Circumstances*. If NMSU's circumstances require a reduction in NMSU compensation or in-kind support of more than ten percent:
 - a. an additional review between the Parties is justified; and
 - b. NMSU must provide a reasonable period of transition to accommodate any necessary operating or staffing change.

- B. Funds Use. The Foundation has a right to use a reasonable percentage of unrestricted funds, assess fees for services, or assess fees on Gifts, endowed funds, and other investments. The Foundation has a right to earmark a portion of its spendable, unrestricted funds designated for NMSU according to an Unrestricted Gift Allocation as set forth in Exhibit C (attached and incorporated into the Agreement). The Foundation must cause:

- 1. each such expenditure to comply with the IRS 501(c)(3) code and be consistent with the Foundation's mission; and
- 2. those funds to be audited as part of the Foundation's annual independent audit.

- C. Advance Planning. The Foundation, in collaboration with NMSU, is responsible for establishing a financial plan to underwrite the cost of each Foundation program, operation and service.

- D. Foundation Resources. The Foundation, at its own expense, must provide servers, computers, databases, email, file storage systems, office supplies, and other such services that are necessary or required to fulfill its responsibilities and obligations. The Foundation owns and must independently control the data and donor records stored on its servers, databases, email, and file storage systems.

- E. Reimbursement to NMSU. The Foundation must reimburse NMSU for all salaries, wages, and fringe benefits of Loaned Personnel.

IV. **Term; Termination.**

A. Definitions.

1. *“Indebtedness”* means all debt incurred by the Foundation on NMSU's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives.
2. *“Term”* means a period during which the Agreement has effect.

B. Duration. The Term is indefinite, beginning on Effective Date, subject to termination as set forth below.

C. Termination. Termination of the Agreement does not relieve the Parties of their obligation to protect and return any Donor Information (defined below). Each Party has a right to terminate this Agreement:

1. for convenience, upon ninety days' prior written notice to the other Party; or
2. immediately for cause, if the other Party has:
 - a. materially defaulted in the performance of its obligations; and
 - b. failed to cure the default within a reasonable time after receiving written default notice from the nondefaulting Party.

D. Post-Term Rights. If NMSU terminates this Agreement, then the Foundation is entitled to require NMSU to pay Indebtedness to the Foundation no later than 180 days after written notice. If the Foundation terminates this Agreement, then NMSU has a right to require the Foundation to pay any debt that NMSU incurred on behalf of the Foundation in like manner.

V. **Coordination between Parties.** *“Executive Session”* means a special meeting that provides an opportunity for the Board or Executive Committee to meet privately to handle any sensitive, confidential or legal matter of the Foundation.

A. Concurrent Personnel Appointments. Along with the Foundation President, the Parties intend the OUA to be staffed by the same Loaned Personnel as NMSU supplies to the Foundation.

B. Communication. In order to foster open communication between the Parties, NMSU must cause the Chancellor to either:

1. include the Foundation President as a member of the Chancellor's Cabinet; or
2. engage the Foundation on a similar process to facilitate joint communication and planning.

C. NMSU Strategic Planning Representation for the Foundation. NMSU must include the Foundation President as an active and prominent participant in strategic planning for NMSU.

D. NMSU Policy Applicable to Foundation. NMSU must use reasonable efforts to apprise the Foundation of any policy or regulation adopted by NMSU that applies to the Foundation.

NMSU must establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records, as defined in Article X of this Agreement.

- E. NMSU Accountability to Foundation Board. NMSU recognizes that:
1. the Foundation is an independent, nonprofit corporation that the Board independently governs; and
 2. any action that NMSU takes concerning Foundation operations or - before being allocated to NMSU - funds, is consequently subject to the Board's approval.
- F. Foundation Executive Committee Representation for NMSU. The Foundation authorizes the Chancellor to represent NMSU as an ex-officio, nonvoting member of the Executive Committee, except when the Executive Committee enters executive session. Staff, attendees, and ex-officio, non-voting members are excluded from Executive Session meetings unless invited to attend.
- G. Periodic Decision-Maker Review. To ensure effective achievement of the Agreement's goals, the Parties must cause certain of their officers and – if Law permits – their respective governing board representatives to:
1. periodically hold meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities; and
 2. review the Agreement's progress either:
 - a. every five years to update as necessary;
 - b. after any material change at either Party of its senior executive leadership (*e.g.*, Chancellor of the University, President of the Foundation, *etc.*); or
 - c. upon written notification of a significant concern by either Party.
- H. Foundation Board Participation. The Foundation must update its bylaws to include the following NMSU representatives as *ex-officio*, non-voting members of the Foundation Board:
1. the Chair of NMSU Board of Regents, or a designee from the Board of Regents;
 2. the Chancellor of NMSU;
 3. the President of NMSU;
 4. one Senior Executive appointed by the Chancellor;
 5. one academic Dean appointed by the Chancellor;
 6. the President of the Associated Students of NMSU; and
 7. the President or Chair of each affiliated organization of the Foundation recognized under Article XIV of the Foundation's bylaws.
- VI. **NMSU Duties**. "*Leaders*" means senior NMSU executives, such as the Chancellor, President, Vice Chancellors, Vice Presidents, Provost, Deans, Athletic Director, and Department Heads.

- A. Compliance with Donor Intent. NMSU must:
1. use each Gift or distribution from any Gift donated to the Foundation, and later transferred to NMSU, according to the donor's intent as documented in an applicable Gift document;
 2. cause its colleges or departments (or like units) to provide to the Foundation written reports regarding the use of funds by NMSU during each preceding fiscal year in order to enable the Foundation to:
 - a. provide donor stewardship impact reports; and
 - b. confirm that Gift funds were used according to donor intent;
 3. provide necessary assistance and decision making in selecting scholarship recipients, faculty chairs and programmatic expenditures, consistent with donor criteria; and
 4. upon receiving – and discussing with the Foundation President – the Foundation’s quarterly report of account balances for expenditure:
 - a. review that report and take appropriate action to ensure timely usage of the available funds according to each donor's documented Gift document; and
 - b. resolve any donor's Gift document ambiguity according to Law.
- B. Fundraising Coordination. Because the Foundation has major responsibility for fundraising, NMSU must cause its Leaders, volunteers, boards, and committees to coordinate with Foundation fundraising initiatives including major Gift solicitations.
- C. Private Gift Opportunities. As the beneficiary of Gift funds raised by the Foundation, NMSU understands its responsibility to support Foundation work with active Leaders’ involvement to assist in identifying, cultivating, and soliciting private Gift prospects.
- D. Naming Opportunities. NMSU must assist the Foundation with establishing naming opportunities and follow each established guideline.
- E. Goals Communication. NMSU must cause:
1. the Chancellor (or designee) to provide to the Foundation current written information outlining NMSU's educational, research and service goals and objectives; and
 2. each Leader to provide prioritized philanthropic funding needs that identify annual and future long-term opportunities for which an active fundraising campaign is desired for that Leader’s Site or program.

VII. **NMSU's Name, Trademarks, and Logos.** “NMSU Identity” means NMSU's name, trademarks, service marks, logos, trade dress, verbiage and associated goodwill.

- A. Grant. NMSU grants to the Foundation, consistent with the Foundation's mission, a right to use NMSU Identity in the promotion of the Foundation's business and activities. The Foundation acknowledges that NMSU owns solely all NMSU Identity. Despite the preceding

grant, the Parties must make clear to all parties with whom they are dealing that the Foundation is a separately incorporated entity.

B. Restrictions.

1. *Third-Party Use.* The Foundation must obtain NMSU's written approval before authorizing any third party to use NMSU Identity.
2. *Allowed Uses.* NMSU acknowledges that any current Foundation use of NMSU Identity is acceptable. Upon determining a need for the Foundation (or third party authorized by the Foundation) to discontinue or modify a general or particular use of NMSU Identity use, NMSU must:
 - a. notify the Foundation; and
 - b. attempt in good faith to resolve any issue concerning that use.
3. *Withdrawn Approval.* Other than for those arrangements enumerated above, NMSU retains final authority to withdraw any authorization granted under this Agreement. Any item for resale or promotional product giveaway that bears any NMSU Identity is subject to royalty and NMSU requires that item to be produced by a licensed vendor only.

VIII. **Priorities, Plans, Accomplishments, and Gift Funds.** The Parties must jointly establish Gift acceptance policies, naming policies and provisions for establishing scholarships, chairs, and other endowed purposes. The Foundation must:

- A. cause the Foundation President to provide to NMSU the Foundation's current strategic plan, including annual objectives and goals for securing Gift support;
- B. provide to NMSU quarterly written reports:
 1. of the Foundation's accomplishments in securing philanthropic support for NMSU; and
 2. of funds available for expenditure by NMSU from any unrestricted Gift, restricted Gift or Endowment so that NMSU can budget and expend these funds;
- C. issue Gift receipts applicable to this Agreement;
- D. manage funds in accordance with its fiduciary obligation to NMSU and according to Donor intent, subject to Law and corporate governance;
- E. cause a binding Gift agreement to be:
 1. signed according to Foundation policy for each major Gift; and
 2. coordinated with and signed by each Party for each Gift requiring an obligation on behalf of either Party (*e.g.*, naming right, matching funds, management of illiquid assets, unrelated business income tax, *etc.*);
- F. keep an account of receipts and distributions in connection with applicable funds;
- G. monitor – and provide to NMSU a quarterly report of – account balances available for expenditure;

- H. for any Gift that a donor endows:
 - 1. invest that Gift unless a relevant Gift instrument or Law specifies otherwise; and
 - 2. make available for disbursement a portion of the earnings from the investment under the Foundation's then-current investment policy;
- I. provide to NMSU any necessary binding Gift agreements, written information or instruction so that NMSU can use funds consistent with donor intent; and
- J. obtain approval from the Board, NMSU and an applicable governmental agency before accepting any grant from that governmental agency.

IX. **Foundation Governance.**

A. Definitions.

- 1. “*Donor Information*” means Foundation donor information in any form or medium about any past, current or prospective donor. Donor Information further includes, without limitation: identifying information, giving history, past involvement with NMSU cultivation and solicitation strategy.
- 2. “*Foundation Audit*” means an annual audit of the Foundation's financial and operational records.

B. Audit Collaboration. The Parties jointly must define the scope of - and negotiate an appropriate and acceptable fee for – the Foundation Audit.

C. Required Compliance. The Foundation must:

- 1. maintain its status as a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code;
- 2. under NMAC 2.2.2.10.A.C, use the same independent accounting firm as NMSU to conduct each Foundation Audit, unless the Foundation receives an exemption from NMSU and the New Mexico State Auditor;
- 3. provide annually to NMSU:
 - a. a copy of each annual audited financial statement including any management letter; and
 - b. evidence of any insurance coverage that the Foundation then has in effect;
- 4. make available to NMSU for review upon its written request associated work papers of the audit for:
 - a. a three year period after each audit date; or
 - b. any longer period that the state of New Mexico requires;
- 5. maintain a conflict-of-interest policy for its staff and the Board;
- 6. decline any Gift (if not a typical Gift that requires NMSU to select scholarships, administer chairs, etc.) that without the advance written consent of an authorized NMSU-level signer would impose onto NMSU:

- a. an apparent or known liability; or
 - b. unusual obligation;
 7. provide, to the Chancellor and NMSU personnel designated by the Chancellor, access to the Foundation's donor information as needed to carry out the mission of NMSU:
 - a. according to the Foundation Policy on Accessing Database Information; and
 - b. as set forth in Article X, below, entitled "Confidentiality;" and
 8. from time to time, disclose to NMSU any applicable Donor Information as set forth in this Agreement.
- X. **Confidentiality.** NMSU recognizes that the Foundation is a separate, private corporation with authority to keep confidential all of its records, documents, and data, consistent with Law.
 - A. Definitions.
 1. "Security Rule" means any policy regarding return of information, restriction on distribution or dissemination, and restriction on printing and returning printed data.
 2. "User" means any individual who gains access to any database, document or file under the Agreement that includes donor Information.
 - B. State Law Confidentiality Duty. The Parties acknowledge Section 6-5A-1 of the New Mexico Statutes, and each protection and requirement set out in that Section, which this Agreement incorporates by reference.
 - C. Foundation Discretion to Disclose.
 1. *Foundation Reservations.* The communication of Donor Information to NMSU:
 - a. is not required by law;
 - b. is totally subject to the discretion of the Foundation; and
 - c. would not be made by the Foundation if that Donor Information, upon disclosure to NMSU, were to be determined to become:
 - i. property of NMSU; or
 - ii. available for public examination otherwise.
 2. *Limited NMSU Right.* Only the Foundation has a right to maintain any Donor Information that has been, or is, disclosed to NMSU. Donor Information remains the proprietary and confidential information, trade secret and property of the Foundation. NMSU's right to use Donor Information is limited to purposes authorized by the Foundation consistent with the Foundation's mission.
 - D. Need for Confidentiality. Preserving the confidentiality of Donor Information is paramount to the effectiveness of the Foundation in carrying out its purposes. The Foundation denies consent to treat as a public record any Donor Information disclosed to NMSU under the Agreement or otherwise, because public or other indiscriminate disclosure of the Donor Information would:

1. violate the need for discretion and confidentiality inherent in the fundraising mission of the Foundation;
2. irreparably damage the Foundation's relationships with past and current contributors; and
3. negatively impact the Foundation's ability to develop new donors.

E. Secrecy Precautions.

1. *Limited Access.* NMSU must limit donor information access only to any NMSU employee:
 - a. whom a Party authorizes; and
 - b. who has a need to know in order to perform an authorized NMSU function or activity:
 - i. under any written arrangement with the Foundation; and
 - ii. subject to each applicable confidentiality requirement and policy.
2. *User Instructions.*
 - a. Awareness. The Foundation must inform each User of that User's responsibility with respect to use, interpretation, and distribution of data. The Parties desire that individuals be aware that all Foundation provided information is confidential and is to be maintained solely by the Foundation.
 - b. Requirements. The Foundation requires each User to use Donor Information solely for development purposes according to each applicable Security Rule. The Foundation prohibits any User from:
 - i. disclosing Donor Information to any third party or the general public; or
 - ii. using Donor Information for any commercial or political purpose.
3. *Foundation Cybersecurity Compliance.* In the interest of ensuring Donor Information confidentiality, the Foundation must:
 - a. cause its cybersecurity compliance program at least to meet NMSU's minimum data security requirements; and
 - b. promptly notify NMSU's IT Compliance Officer and Chief Privacy Officer of any breach of any Foundation system or data that poses potential reputational damage to NMSU Identity.

- F. Return/Destruction of Information. NMSU must return promptly to Foundation any Donor Information disclosed to NMSU that legally cannot be kept confidential, including either returning or destroying any copy that NMSU has made of that information. NMSU must also return to the Foundation – or with Foundation's permission delete or destroy – all Donor Information or other private information that is disclosed to NMSU upon the sooner of:

1. the completion of NMSU's use; or
 2. the Foundation's request.
- G. NMSU Protections. NMSU must use reasonable efforts to implement practices and procedures to protect the privacy and confidentiality of any donor or Foundation record as set forth in this Agreement.
- XI. **Open Meetings Act; Inspection of Public Records Act**. The Parties understand that the Foundation, not being a public agency or a governing body, is not required to adhere to the New Mexico Open Meetings Act. The Parties must take each step, and this Agreement is to be construed, so as not to subject the Foundation or its activities and records to the New Mexico Open Meetings Act or New Mexico Inspection of Public Records Act. Nothing in this Agreement is considered to be a waiver of the Foundation's exemption from these statutes.
- XII. **Foundation Dissolution**. Consistent with the Foundation's Articles of Incorporation, if the Foundation is dissolved, then the Foundation's assets are to be distributed, paid over, conveyed, and transferred to NMSU to be used for educational or scientific purposes.
- XIII. **Miscellaneous**.
- A. Amendment. Each Party has a right to modify or amend this Agreement only upon obtaining a written understanding that both Parties sign.
 - B. Prohibition against Assignment. A Party must obtain the other Party's written consent before assigning this Agreement to any third party.
 - C. Third Parties. Nothing in this Agreement is considered to create or give rise to any right in any third party or any person other than the Parties.
 - D. Governing Law. This Agreement – and any claim relating to or arising out of the Agreement or its breach – is governed by and to be construed according to the laws of the State of New Mexico, excluding that State's choice-of-law principles.
 - E. Arbitration. The Parties must resolve any legal dispute that is not resolved through negotiations:
 1. subject to New Mexico state law; and
 2. by final and binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures, rather than under any civil lawsuit.
 - F. Headings. Any heading of any part of this Agreement is inserted only as a matter of convenience and for reference and in no way defines, limits, or describes the scope or intent of this Agreement.
 - G. Entire Agreement. This Agreement:
 1. constitutes an entire understanding between the Parties with respect to its subject matter; and
 2. when fully signed, supersedes and terminates:

- a. the Memorandum of Understanding between the Parties dated July 23, 2007; and
- b. any other prior or existing understanding, whether unwritten or in writing, with respect to that subject matter.

Signed:



Dan Arvizu, Chancellor
Regents of New Mexico State University



Derek Dictson, President
New Mexico State University Foundation, Inc.

Reviewed and Acknowledged:



Dina Chacón-Reitzel, Chair
Regents of New Mexico State University



Bobby Lutz, Chair
New Mexico State University Foundation, Inc.

Exhibit A

About the Foundation (the “Foundation”)

The Foundation is an incorporated 501(c)(3) nonprofit organization that is separate and independent from NMSU, and whose mission is to secure and manage private Gifts to promote the educational, research and service purposes of NMSU. The Foundation exists for the purpose of enhancing both the image and value of NMSU for students, faculty, staff, alumni, and all other friends and members of NMSU community.

The Foundation has been carrying out that mission since it was organized and incorporated on August 27, 1959 and is dedicated to assisting NMSU by engaging alumni, fostering a culture of philanthropy, growing the Endowment, and providing financial and other support for long-term academic and other institutional priorities.

The Board of Directors of the Foundation is responsible for the control and management of all assets of the Foundation, including prudently managing all Gifts and using such funds for the benefit of NMSU and its affiliates, subject to the donor's intent and Law.

The Foundation's Articles of Incorporation and Bylaws, and Law govern the Foundation's operations. The directors and officers of the Foundation exercise their fiduciary responsibilities according to these governance documents, Foundation policies, agreements with NMSU and others and Law.

Exhibit B

Advancement Services Arrangement

The Parties desire to clarify their expectations in continuing Services as set forth in the Agreement.

A. Goals. The Parties must:

1. pursue a ten-year goal of:
 - a. funding the OUA budget equally, reducing the Foundation Endowment management fee to one-and-one-quarter percent; and
 - b. developing an advancement operation that is capable of sustainably doubling annual fundraising from \$15 million to \$30 million; and
2. pursue a joint investment equal to \$59.00 *per* alumnus, adjusted for inflation, based on a study of national best practices and peer benchmarks.

B. Effective Period. “*Services Period*” means a period during which this Exhibit has effect.

- A. *Duration*. The Services Period is ten years, beginning on July 1, 2021, subject to renewal as set forth under the Exhibit.
- B. *Renewal*. The Services Period renews for successive one-year periods unless the Parties in writing either modify or terminate that period.

C. Financial.

1. *Definitions*.
 - a. “*CEOs*” means collectively the NMSU Chancellor and the Foundation President (or their respective designees).
 - b. “*Fee for Service*” means an annual funding amount that NMSU provides to the Foundation under this Exhibit as illustrated in item C.4 of this Exhibit.
 - c. “*Full-Service Lease*” means a lease in which NMSU pays the base rent and all operating costs including, without limitation: property taxes, utilities, insurance, cleaning, landscaping and maintenance.
2. *Compensation*. In exchange for the Services, NMSU must provide to the Foundation:
 - a. a Fee for Service, payable on a quarterly basis, with first payment due July 1, 2021;
 - b. an in-kind Full-Service Lease for office space sufficient to house Foundation staff; and
 - c. a Reimbursement, payable on a quarterly basis by each Site, equal to fifty percent of the salaries, wages, and fringe benefits of the applicable Loaned Personnel.

3. *Replacement.* The above compensation:
 - a. replaces instruction and general funding from NMSU for advancement staff positions and operations; and
 - b. represents a commitment by the Foundation to provide a level of advancement staffing and services that the Parties annually specify as part of the consultation process outlined in the Agreement.

4. *Fee for Service Schedule.*

- a. Increase Purposes. As limited by any reasonable budgeting constraint arising from NMSU's legislative appropriation and other funding circumstances, the Fee is subject to an annual increase necessary to:
 - i. fund the OUA budget equally between the Parties;
 - ii. reduce the Foundation Endowment fee to one-and-one-quarter percent over a ten-year period; and
 - iii. achieve a joint investment equal to \$59.00 per alumnus, adjusted for inflation.

- b. Progression. The Fee for Service increase progresses annually as set forth below:

\$3,000,000	July 1, 2021 to June 30, 2022
\$3,400,000	July 1, 2022 to June 30, 2023
\$3,600,000	July 1, 2023 to June 30, 2024
\$3,800,000	July 1, 2024 to June 30, 2025
\$4,000,000	July 1, 2025 to June 30, 2026
\$4,200,000	July 1, 2026 to June 30, 2027
\$4,300,000	July 1, 2027 to June 30, 2028
\$4,400,000	July 1, 2028 to June 30, 2029
\$4,500,000	July 1, 2029 to June 30, 2030
\$4,600,000	July 1, 2030 to June 30, 2031

5. *Further Negotiation.* The Parties anticipate that a need may exist to transfer from NMSU to the Foundation certain duties that apply to NMSU under this Agreement. Under that circumstance, the Parties must cause the CEOs to negotiate a Fee for Service arrangement that is supplemental to that set forth under this Exhibit for each such transferred duty.

- D. Consultation. The Parties must cause the CEOs to meet as needed, but not less frequently than annually, to review the Services and to determine the performance and scope of the

Services. The Foundation also must hold regular meetings with each Site to:

1. review progress toward fundraising goals;
 2. plan development priorities and goals for the upcoming year;
 3. review the development performance for that Site; and
 4. develop strategies for stewardship and solicitation of Gifts.
- E. Modifications. A Party has a right to modify this Exhibit only by a written document that both Parties have signed as a consequence of the CEOs' consultation process.
- F. OUA Funding Projection. A ten-year OUA funding projection that the Parties annually must review and update is included for illustration purposes in Exhibit D (attached and incorporated into the Agreement).

Exhibit C

Unrestricted Gift Allocation

The Parties desire under this Exhibit to clarify their allocation of any Gift to either Party that the Gift's donor does not designate for any specific unit or use with respect to either of the Parties ("*Unrestricted Gift*").

- A. Effective Period. "*UGA Period*" means a period during which this Exhibit has effect.
1. *Duration*. The UGA Period is five years, beginning on July 1, 2021, subject to renewal as set forth under the Exhibit.
 2. *Renewal*. The UGA Period renews for successive one-year periods unless the Parties in writing either modify or terminate that period.
- B. Allocation.
1. *Definitions*.
 - a. "*Percentage*" means an average percentage of the OUA and Foundation operating budget that a respective Party provided during the previous three fiscal years, based on audited financial statements. Percentage includes a fair market value for NMSU's in-kind full-service lease for office space.
 - b. "*QEndowment*" means a quasi-endowment, to be made available for use according to the Foundation's Endowment spending policy.
 - c. "*Share*" means a Party's allocation of an Unrestricted Gift.
 2. *If under \$1,000,000*. The Parties must divide evenly (50/50) any Unrestricted Gift under **\$1,000,000**. The Foundation must deposit its Share as a QEndowment. NMSU has discretion to deposit its Share either into a current-use account or as a QEndowment.
 3. *If at least \$1,000,000*. The Parties must cause:
 - a. any Unrestricted Gift of at least **\$1,000,000** to be invested in the Foundation Endowment pool while the Parties cause a calculation to be performed to determine each Party's Percentage;
 - b. each Party to be allocated a percentage of the Gift equal to that Party's Percentage;
 - c. the Foundation's Share to be deposited as a QEndowment;
 - d. from NMSU's Share:
 - i. at least eighty percent to be deposited as a QEndowment, which percentage is subject to modification upon the Parties' concurrence; and
 - ii. the remainder to be placed into a current use account.
- C. Reduction of University Fee for Service. The Parties desire for the Foundation continually to grow its ability to raise private Gifts for NMSU, and eventually become self-sustaining. As annual earnings from Unrestricted Gifts allocated to the Foundation QEndowment grow, the Parties may negotiate a reduction to NMSU's annual fee for Services until the Foundation is

self-sustaining.

- D. **Consultation.** The Parties must cause the Foundation President and the Chancellor to meet as needed, but not less frequently than annually, to review this Exhibit.
- E. **Illustration.** This illustration presents an example of the Unrestricted Gift allocation calculation that the Parties annually must review and update. The Percentage in the illustration is based on the trailing three-year average for FY18 - FY20. The Foundation’s investment policy defines the annual distribution rate as four percent of a twelve-quarter rolling average of market value.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021 Projected
NMSU I&G Funding	\$ 1,862,671	\$ 2,150,408	\$ 1,807,987	\$ 1,819,791	\$ 2,377,199	\$ 2,224,000
NMSU In-Kind Funding	\$ 210,534	\$ 207,196	\$ 210,319	\$ 166,112	\$ 131,018	\$ 198,949
Foundation Funding	\$ 3,619,286	\$ 3,577,148	\$ 3,437,295	\$ 3,341,191	\$ 3,044,085	\$ 4,361,500
Advancement Total	\$ 5,692,491	\$ 5,934,752	\$ 5,455,601	\$ 5,327,094	\$ 5,552,302	\$ 6,784,449
University %	36%	40%	37%	37%	45%	36%
University 3 yr ave			38%	38%	40%	39%
Foundation %	64%	60%	63%	63%	55%	64%
Foundation 3 yr ave			62%	62%	60%	61%
Unrestricted Gift Allocation Illustration						
\$10,000,000 Gift		FY 18-20 Percentage	Share of Gift	Current Use (20%)	QEndowed (80/100%)	Annual Earnings (4%)
	NMSU	40%	\$ 3,981,626	\$ 796,325	\$ 3,185,301	\$ 127,412
	Foundation	60%	\$ 6,018,374	\$ -	\$ 6,018,374	\$ 240,735
\$1,000,000 Gift		FY 18-20 Percentage	Share of Gift	Current Use (20%)	QEndowed (80/100%)	Annual Earnings (4%)
	NMSU	40%	\$ 398,163	\$ 79,633	\$ 318,530	\$ 12,741
	Foundation	60%	\$ 601,837	\$ -	\$ 601,837	\$ 24,073
\$500,000 Gift		Percentage	Share of Gift	Current Use (100%)	QEndowed (100%)	Annual Earnings (4%)
	NMSU	50%	\$ 250,000	\$ 250,000	\$ -	\$ -
	Foundation	50%	\$ 250,000	\$ -	\$ 250,000	\$ 10,000

Exhibit D
OUA Funding Projection

	FY21		FY22		FY23		FY24		FY25		FY26		FY27		FY28		FY29		FY30		FY31		Total			
NMSU Fee For Service	\$ 2,224,000	34%	\$ 3,000,000	41%	\$ 3,400,000	44%	\$ 3,600,000	45%	\$ 3,800,000	47%	\$ 4,000,000	48%	\$ 4,200,000	50%	\$ 4,300,000	50%	\$ 4,400,000	50%	\$ 4,500,000	50%	\$ 4,600,000	50%	\$ 4,600,000	50%	\$ 42,024,000	47%
Foundation Funding	\$ 4,361,500	66%	\$ 4,400,000	59%	\$ 4,400,000	56%	\$ 4,400,000	55%	\$ 4,350,000	53%	\$ 4,300,000	52%	\$ 4,250,000	50%	\$ 4,300,000	50%	\$ 4,400,000	50%	\$ 4,500,000	50%	\$ 4,600,000	50%	\$ 4,600,000	50%	\$ 48,261,500	53%
Total Cash Funding	\$ 6,585,500		\$ 7,400,000		\$ 7,800,000		\$ 8,000,000		\$ 8,150,000		\$ 8,300,000		\$ 8,450,000		\$ 8,600,000		\$ 8,800,000		\$ 9,000,000		\$ 9,200,000		\$ 9,200,000		\$ 90,285,500	
Total Cash Funding Goal	\$ 7,670,000	86%	\$ 7,823,400	95%	\$ 7,979,868	98%	\$ 8,139,465	98%	\$ 8,302,255	98%	\$ 8,468,300	98%	\$ 8,637,666	98%	\$ 8,810,419	98%	\$ 8,986,627	98%	\$ 9,166,360	98%	\$ 9,349,687	98%	\$ 9,349,687	98%	\$ 93,334,047	97%
Expected Funding Increase			112%		105%		103%		102%		102%		102%		102%		102%		102%		102%		102%			
\$/Alum	\$ 50.66		\$ 56.92		\$ 60.00		\$ 61.54		\$ 62.69		\$ 63.85		\$ 65.00		\$ 66.15		\$ 67.69		\$ 69.23		\$ 70.77		\$ 71.92		\$ 71.92	
\$/Alum Goal (2% inflation)	\$ 59.00	86%	\$ 60.18	95%	\$ 61.38	98%	\$ 62.61	98%	\$ 63.86	98%	\$ 65.14	98%	\$ 66.44	98%	\$ 67.77	98%	\$ 69.13	98%	\$ 70.51	98%	\$ 71.92	98%	\$ 71.92	98%	\$ 71.92	98%
Est. Alumni	130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000		130,000	
Est. Gifts & Pledges	\$ 15,000,000		\$ 16,080,000		\$ 17,237,760		\$ 18,478,879		\$ 19,809,358		\$ 21,235,632		\$ 22,764,597		\$ 24,403,648		\$ 26,160,711		\$ 28,044,282		\$ 30,063,470		\$ 30,063,470		\$ 239,278,337	
NMSU ROI	674%		536%		507%		513%		521%		531%		542%		568%		595%		623%		654%		654%		569%	
Total ROI	228%		217%		221%		231%		243%		256%		269%		284%		297%		312%		327%		327%		265%	
Est. Endowment Value (5% annual increase)																										
(2% inflation + 3% gifts)	\$ 185,000,000		\$ 194,250,000		\$ 203,962,500		\$ 214,160,625		\$ 224,868,656		\$ 236,112,089		\$ 247,917,694		\$ 260,313,578		\$ 273,329,257		\$ 286,995,720		\$ 301,345,506		\$ 301,345,506			
Endowment Fee (reduce 0.1% annually)	\$ 3,400,000		\$ 3,510,250		\$ 3,499,275		\$ 3,470,114		\$ 3,429,290		\$ 3,375,707		\$ 3,308,193		\$ 3,225,488		\$ 3,256,502		\$ 3,419,327		\$ 3,590,294		\$ 3,590,294		\$ 37,484,440	
Other Foundation Revenue	\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 1,000,000		\$ 11,000,000	
Est. Foundation Revenue	\$ 4,400,000	101%	\$ 4,510,250	103%	\$ 4,499,275	102%	\$ 4,470,114	102%	\$ 4,429,290	102%	\$ 4,375,707	102%	\$ 4,308,193	101%	\$ 4,225,488	98%	\$ 4,256,502	97%	\$ 4,419,327	98%	\$ 4,590,294	100%	\$ 4,590,294	100%	\$ 48,484,440	100%