

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), by and between ALBUQUERQUE COMMUNITY FOUNDATION, a New Mexico nonprofit corporation, (“ACF”) and NEW MEXICO COMMUNITY TRUST, a New Mexico nonprofit corporation, (“NMCT”) is made effective January 1, 2022 (the “Effective Date”).

WHEREAS, ACF is a 501(c)(3) tax-exempt organization, established to administer a permanent community endowment from which distributions are used to provide grants to nonprofit organizations and educational institutions throughout the Albuquerque metropolitan area; and

WHEREAS, NMCT is a 501(c)(3) tax-exempt organization, established to administer a permanent community endowment from which distributions are used to provide grants to nonprofit organizations and educational institutions throughout New Mexico; and

WHEREAS, ACF is NMCT’s sole member; and

WHEREAS, the parties have determined that it is in their mutual best interest for ACF to provide NMCT with certain services, office space, and other resources.

NOW, THEREFORE, in consideration of the agreements and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. Term. The term of this MOU shall be three (3) years, beginning on the Effective Date and continuing until December 31, 2024. At any time prior to November 1, 2024, the parties may, in writing, extend the term of this MOU until December 31, 2026.

2. Services and Resources. ACF shall provide NMCT with personnel and resources as set forth in this Section 2 (the “Services”):

(a) Personnel. ACF employees shall from time to time perform services for NMCT as described on Schedule A.

(b) Facilities, Equipment, and Supplies. ACF shall allow NMCT to use ACF’s offices located at 624 Tijeras Avenue NW, Albuquerque, New Mexico, including office equipment and supplies, to carry out NMCT’s operations.

(c) Software and Internal Business Applications. ACF shall allow NMCT to use ACF’s basic office productivity software, accounting system software, and business applications used by ACF internally.

(d) Telecommunications. ACF shall allow NMCT to use ACF’s network and telecommunications equipment and facilities, including networking equipment, software, bandwidth, ISP and hosting services, and other similar equipment.

(e) Additional Services. ACF employees shall provide NMCT administrative services in accordance with the terms of an agency agreement substantially in the form attached hereto as Exhibit A (“Agency Agreement”).

(f) Third-Party Procurements. ACF may from time to time procure goods and/or services from third parties for the benefit of NMCT, including legal services, financial audits, tax return preparation, and investment services.

3. Reimbursement and Administrative Fee.

(a) Reimbursement Amount. Except as otherwise provided in Section 3(b), the reimbursement amount for the Services shall be based on (i) hourly rates for ACF’s employees, calculated using wages, payroll taxes, fringe benefits, and retirement benefits paid to or for the benefit of an employee and a forty (40) hour work week and set forth on Schedule B, which ACF shall update annually, (ii) an indirect cost rate of ten percent (10%) of the costs provided for in (i), and (iii) the actual cost of goods and services purchased from third parties for NMCT’s benefit. ACF shall keep time records showing the time ACF’s employees worked for NMCT and shall calculate the reimbursement amount in accordance with the terms of this Section 3(a).

(b) Administrative Fee. ACF shall charge NMCT an administrative fee for service provided in accordance with the terms of the Agency Agreement at the rates set forth therein.

(c) Invoices. No later than ten (10) days after the end of each quarter, ACF shall submit an invoice to NMCT for the cost of the Services. ACF shall provide sufficient information on each invoice to support the computation of the amount due and copies of any receipts, documents, or other information relating to the amount owed. Payment shall be due and payable within thirty (30) days of NMCT’s receipt of an invoice.

4. Recordkeeping. ACF shall maintain all records, books, and documents related to the Services provided hereunder, including, without limitation, personnel, property, and financial records, in accordance with ACF’s document retention policy, or for longer periods if necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this MOU. ACF shall make all records, books, papers, and other documents that relate to this MOU available upon reasonable request for inspection and review by NMCT or its authorized representatives of NMCT.

5. Confidentiality. Except with the prior written consent of the other party or to the extent required by law, each party shall keep confidential and shall not disclose or use for the benefit of any third party, any confidential information obtained from the other party in connection with its activities under this MOU. Confidential information includes, without limitation, information about personnel, donors, grantees, volunteers, operating procedures, strategies, financial information, funding opportunities, and other information provided or obtained in connection with this MOU. Confidential information does not include information generally available to the public, information already known by the receiving party before entering into this MOU, or information independently acquired. All confidential information furnished under this

MOU shall remain the property of the furnishing party and shall be returned to the furnishing party to the extent possible upon the termination of this MOU.

6. External Audits. The parties shall each reasonably cooperate with one another in connection with any financial, regulatory, tax, funder, or other audit by providing information and/or documents relevant to activities carried out under this MOU.

7. Bylaws. During the term of this MOU, NMCT shall not amend its bylaws in any manner that modifies the rights of its members set forth in the form of bylaws attached hereto as Exhibit B without ACF's prior written consent, which shall not be unreasonably withheld. Following termination of this MOU, NMCT may amend its bylaws in any manner, including removing ACF as a member or modifying the rights of NMCT's members.

8. Adverse Development Disclosure. Each party shall promptly notify the other of any change in its status as a tax-exempt entity, any change in its status as a nonprofit corporation in good standing in New Mexico, or any funding losses, litigation, or other matters that have or could have a material adverse effect on the party's financial condition or ability to carry out its responsibilities under this MOU.

9. Indemnification. Each party shall defend, indemnify, and hold the other harmless from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements, the other party may suffer or incur that arise or result primarily from the breach of any of the party's obligations, agreements, or duties under this MOU.

10. Termination.

(a) Termination for Any or No Reason. The parties may terminate this MOU at any time upon the mutual consent of the parties. Either party may, with or without cause, terminate this MOU by providing written notice to the other party. Such termination shall be effective thirty (30) days after delivery of the notice.

(b) Termination for Breach. If either party materially breaches any of its obligations under this MOU, the non-breaching party may give the breaching party written notice of the breach and its intent to terminate this MOU. If the breaching-party fails to cure the breach within thirty (30) days after delivery of the notice, this MOU shall terminate upon the expiration of the thirty (30) day period.

(c) Effect of Termination and Orderly Transition. Upon termination of this MOU, NMCT shall pay ACF any outstanding amounts owed within thirty (30) days of the effective date of the termination. The parties shall return to one another, at each party's own expense, any confidential information belonging to the other party. Both parties shall cooperate in good faith to bring all activities under this MOU to an orderly conclusion to minimize any adverse impact on the communities they serve.

11. Notices. All notices and other communications to be given hereunder to either party shall be in writing and delivered personally, mailed by certified mail, or emailed. If mailed, a notice or other communication shall be deemed delivered five (5) days after it is deposited in the

U.S. mail in a sealed and properly addressed envelope with postage thereon prepaid. If emailed, a notice or other communication shall be deemed to be delivered when the email is sent. All notices and other communications shall be addressed to the individuals in the capacities indicated below, at the address or email address set forth below, or such other address or email address as may be designated in writing hereafter:

ACF:	Nicholas Williams, CFO 624 Tijeras Avenue NW Albuquerque, NM 87102 nick@abqcf.org	Board Chair 624 Tijeras Avenue NW Albuquerque, NM 87102
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NMCT:	R. Randall Royster, President & CEO 624 Tijeras Avenue NW Albuquerque, NM 87102 randy@nmctrust.org	Board Chair 624 Tijeras Avenue NW Albuquerque, NM 87102
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12. Dispute Resolution. Should any dispute arise out of this MOU, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. If mediation is unsuccessful, the dispute shall be settled by binding arbitration under the provisions of the New Mexico Uniform Arbitration Act. The parties shall share the costs of mediation or arbitration equally. The arbitrator's award will be final and binding, and the judgment may be entered in any court of competent jurisdiction.

13. Independent Entities. The arrangements contemplated by this MOU do not create a partnership, franchise, joint venture, fiduciary, or similar relationship for any purpose except as otherwise stated in this MOU. Neither party shall have the power or authority to act for the other or to bind or obligate the other to a third party.

14. Compliance with Laws. The parties shall perform their obligations under this MOU in accordance with all applicable federal, state and local laws, rules, regulations, and orders.

15. Binding Effect; Assignment. This MOU shall be binding upon the parties, their respective and permitted successors, transferees, and assignees. Neither party may assign, subcontract, or transfer any of its rights, responsibilities, or obligations under this MOU without the other party's prior written consent.

16. No Third Party Beneficiaries. This MOU is for the exclusive benefit of the parties and not for the benefit of any third party including, without limitation, any employee, other current or future affiliate, or any other related party.

17. Entire Agreement; Amendments. This MOU contains the entire agreement between the parties and supersedes all oral agreements, negotiations, and representations between the parties pertaining to the subject matter of this MOU. Any amendments to this MOU shall be in writing, signed by an authorized representative of each party, and attached to this MOU.

18. Further Assurances. The parties shall sign any other documents and take any other actions as may be request by the parties to affect the relationships and activities contemplated by this MOU and/or to account for and document those activities.

19. Severability. The invalidity or unenforceability of any provision or portion herein shall not affect the validity or enforceability of any other provision of this MOU or the remaining portions of the provision deemed to be invalid or unenforceable.

20. Waiver. Any waiver under this MOU must be in writing and signed by the party granting the waiver. A waiver by either party of any breach of any provision of this MOU shall not be deemed a waiver of any subsequent breach by the other party of the same or of different provisions.

21. Survival. The provisions of this MOU shall survive the termination of this MOU to the extent necessary to effectuate the terms contained herein.

22. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of New Mexico.

23. Authority. Each person executing this MOU, by his or her execution of this MOU, represents and warrants that he or she is fully authorized to do so.

24. Counterparts; Electronic Transmission. This MOU may be executed in counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument. Signatures may be transmitted by facsimile, email or other electronic means and shall have the same legal effect as if they were original signatures.

IN WITNESS WHEREOF, the parties have executed this MOU effective as of the date first above written.

ALBUQUERQUE COMMUNITY FOUNDATION,  
a New Mexico nonprofit corporation

DocuSigned by:  
By: Beverly R. Bendicksen  
E5D027A3600B422...  
Beverly Bendicksen, Board Chair

NEW MEXICO COMMUNITY TRUST,  
a New Mexico nonprofit corporation

DocuSigned by:  
By: Carl Alongi  
54BC9B8874C7409...  
Carl Alongi, Board Chair

## **SCHEDULE A**

### **Personnel Services**

Examples of services to be provided by ACF to NMCT, as may be subsequently amended by the parties from time to time, to be reimbursed at the hourly rates shown on Schedule B plus an indirect cost rate of 10%

- Donor development and stewardship
- Grant administration
- Communications and marketing including upkeep of website and marketing materials
- Assisting with the governance of NMCT
- Providing back office support services to clients of NMCT
- Preparation of internal financial statements and documents for the completion of audited financial statement and tax returns

**SCHEDULE B**

## Hourly Rates

<b>Last Name</b>	<b>First Name</b>	<b>Title</b>	<b>Rate</b>
Carr	Jeffrey	Accountant and HR Senior Associate	26.43
Earl	Clarissa	Communications and Events Associate	23.83
Garcia	Dominic	Scholarship and Grants Associate	26.80
Griego	Danielle	Governance Associate	25.97
Griffis	Khia	Community Impact Director	37.51
Leung	Katherine	Donor Development Senior Associate	26.12
Magallanez	Marisa	VP of Strategy and Equity	56.64
Moya	Juaquin	VP of Philanthropic Advising	54.98
Mwei	Sandra	Donor Relations Senior Associate	22.03
Nava	Denise	Communications Director	38.64
Rawls	Tiffany	Finance Director	41.27
Royster	Randall	President & CEO	128.67
Schoepke	Karen	Senior Administrative Associate	24.78
Spencer	Letisha	Grants Associate	25.86
Williams	Nicholas	Chief Financial Officer	64.68

## EXHIBIT A

### AGENCY AGREEMENT

THIS AGENCY AGREEMENT (“Agreement”), by and between ALBUQUERQUE COMMUNITY FOUNDATION, a New Mexico nonprofit corporation, (“ACF”) and NEW MEXICO COMMUNITY TRUST, a New Mexico nonprofit corporation, (“NMCT”) is made effective January 1, 2022 (the “Effective Date”).

WHEREAS, ACF is organized and operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (the “Code”); and

WHEREAS, ACF’s investment assets are held by a custodian, currently US Bank, and invested in accordance with its investment strategy set forth in ACF’s Investment Policy (the “Investment Policy”), attached hereto, with guidance from a financial advisor, currently RVK, Inc.; and

WHEREAS, NMCT is organized and operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Code; and

WHEREAS, NMCT desires to pool its investment assets with ACF’s investments to take advantage of economies of scale and diversification available to ACF, in an effort to promote greater efficiency in NMCT’s operations and to further the charitable objectives of NMCT; and

WHEREAS, ACF is willing to allow NMCT to pool its funds with ACF’s investment assets pursuant to the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the agreements and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. Assets. NMCT may, from time to time, deliver to ACF assets to be pooled with ACF’s investment assets. ACF shall hold such assets and any net income derived from the investment of such assets (the “NMCT Assets”) as an agent of NMCT and shall invest the NMCT Assets on behalf of NMCT pursuant to the terms and conditions of this Agreement. The NMCT Assets shall be commingled with the assets of ACF and shall not be separately invested; however, an account shall be established on ACF’s books to account for the NMCT Assets and NMCT’s proportional share of investment earnings, losses, and expenses, which shall be allocated to the account for the NMCT Assets on a monthly basis. NMCT’s transfer of assets to ACF shall be a revocable transfer. ACF cannot accept additions to the NMCT Assets from individual donors. ACF does not have variance power with respect to the NMCT Assets. The NMCT Assets shall be at all times the property of NMCT, and NMCT shall have immediate, unrestricted, and exclusive use, benefit, and enjoyment thereof.

2. Investment. Upon accepting the NMCT Assets, ACF shall invest the NMCT Assets in accordance with the investment strategy set forth in the Investment Policy, which may be

amended or supplemented in writing from time to time by ACF. The board of directors of ACF has ultimate responsibility for setting the investment objectives and may change investment objectives without the approval of NMCT; provided, however, ACF shall provide NMCT with sixty (60) days' prior written notice of any changes to ACF's investment objectives. At any time ACF holds NMCT Assets, NMCT may appoint one (1) representative to ACF's Investment Committee, subject to ACF's approval, which shall not be unreasonably withheld. The objectives of ACF's Investment Policy shall at all times be implemented by professional registered investment advisors pursuant to a written agreement between ACF and such advisors to manage the assets of ACF generally and/or the NMCT Assets. Securities trades shall be pursuant to orders issued by said investment advisor and shall be effected by a bank or a broker or dealer registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). At all times, the NMCT Assets shall be held by a third party custodian pursuant to an agreement between said custodian and ACF. Agreements between the investment advisors, bank, broker, dealer, or custodian and ACF shall be collectively referred to as "Third Party Investment Agreements."

3. Authority.

(a) NMCT hereby grants to ACF power and authority to cause the NMCT Assets to be invested and reinvested in accordance with the Investment Policy. In accordance with this grant of authority, ACF, as NMCT's agent with respect to the investment, reinvestment, and supervision of the NMCT Assets, may, when ACF deems it appropriate and without prior consultation with NMCT, in accordance with the Investment Policy, authorize ACF's investment advisors to (i) commit for, buy, sell, exchange, convert, and otherwise trade in any stocks, bonds, and other securities and (ii) place orders for the execution of such security transactions with or through brokers, dealers, issuers, or counterparties in accordance with the Investment Policy.

(b) NMCT hereby appoints and authorizes ACF to act as its agent under this Agreement and the Third Party Investment Agreements with such powers and discretion as are specifically delegated to ACF by the terms of this Agreement and the Third Party Investment Agreements, together with such other powers as are reasonably incidental thereto. ACF shall not have any duties or responsibilities except those expressly set forth in this Agreement and the Third Party Investment Agreements. ACF shall not be a trustee or fiduciary for NMCT; that is, ACF shall in all events act in ACF's own best interest. ACF shall not be responsible to NMCT for any recital, statement, representation, or warranty made in or in connection with any Third Party Investment Agreement or any certificate or other document referred to or provided for in, or received by any of them under, any Third Party Investment Agreement, other than representations and warranties made by ACF, or for any failure by any party other than ACF to perform any of its obligations thereunder. ACF may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by ACF with reasonable care. In all instances under this Agreement, ACF shall act with such reasonable care and use such business judgement as if it were administering ACF's own investments. ACF shall be entitled to rely upon any certification, notice, instrument, writing, or other communication, including, without limitation, any thereof by telephone or facsimile, believed by ACF to be genuine and correct and to have been signed, sent, or made by or on behalf of the proper person or persons, and upon advice and statements of legal counsel, independent accountants, and other experts selected by ACF with reasonable care.

4. Withdrawals. Subject only to the conditions and restrictions provided in this paragraph, NMCT shall have the right to withdraw all or any portion of the NMCT Assets at any time by providing ACF with ten (10) business days' advance written notice. Withdrawals may be made no more than once per week. Withdrawals in excess of One Million Dollars (\$1,000,000) shall require thirty (30) business days' advance written notice. In the event NMCT seeks to withdraw all of the NMCT Assets, payment shall be made in two separate tranches: (a) eighty percent (80%) of the amount payable to NMCT shall be paid within thirty (30) business days after ACF receives written notice of such withdrawal and (b) the remaining twenty percent (20%) paid within the following sixty (60) business days to ensure that the final payment includes any and all accrued earnings attributable to the NMCT Assets. Unless otherwise agreed to in writing, payments shall be made in cash or cash equivalent.

5. Fees and Expenses.

(a) NMCT shall be responsible for its pro rata share of investment management and other fees and costs charged by the investment advisors managing the NMCT Assets (collectively, the "Investment Fees") and for reasonable professional expenses related to the investment of the NMCT Assets, including, without limitation, custody, consulting, audit, regulatory compliance, legal, accounting, or professional fees and related charges ("Expenses"). Additionally, NMCT will be charged administrative fees in accordance with ACF's current fee schedule set forth on Schedule A ("Administrative Fees"), which ACF may change from time to time upon sixty (60) days' prior written notice.

(b) NMCT shall be assessed Investment Fees, Expenses, and Administrative Fees on a quarterly basis. Investment Fees, Expenses, and Administrative Fees shall be prorated based on the number of days the NMCT Assets are under management by ACF during the previous month. Investment Fees, Expenses, and Administrative Fees due from NMCT shall be payable monthly between the first and fifth business day of the month. NMCT authorizes periodic deduction of all Investment Fees, Expenses, and Administrative Fees, due and payable to ACF in accordance with this Agreement, from the NMCT Assets, or if at any time the NMCT Assets are insufficient to cover Investment Fees, Expenses, and Administrative Fees chargeable to the NMCT Assets, NMCT agrees to pay and/or reimburse ACF promptly upon written request.

6. Financial Statements. ACF shall distribute quarterly financial and other detailed reports to NMCT within thirty (30) days of the end of each calendar quarter. Investment performance of the NMCT Assets shall be reported on a monthly basis within thirty (30) days of the end of each calendar month. An audited financial statement of ACF shall be distributed to NMCT within sixty (60) days of acceptance of such statement by ACF.

7. NMCT Representations, Warranties, and Covenants.

(a) NMCT represents and warrants that (i) it has received a ruling from the Internal Revenue Service (the "IRS") that it is an organization described in Section 501(c)(3) of the Code; (ii) the facts and circumstances forming the basis for the issuance of the ruling have not substantially changed since the date of issuance thereof; and (iii) the ruling has not been revoked.

(b) NMCT represents, warrants, and covenants that all of the financial benefits accruing to NMCT from the investment of the NMCT Assets, less fees and expenses, shall be used only for tax exempt purposes of NMCT.

(c) NMCT represents, warrants, and covenants that no part of the NMCT Assets is or will be attributable to a retirement plan of NMCT that provides for employee contributions.

(d) NMCT covenants and agrees that it shall not assign, encumber, or otherwise transfer any part of its interest in the NMCT Assets.

(e) NMCT represents and warrants that this Agreement has been duly authorized by requisite action of NMCT and has been executed on behalf of NMCT by persons authorized to do so.

(f) NMCT agrees that it shall promptly notify ACF in writing in the event the IRS revokes its ruling that NMCT is a tax exempt organization described in Section 501(c)(3) of the Code, or if the IRS, the New Mexico Taxation and Revenue Department (“TRD”), or the New Mexico Attorney General’s office (the “AG”) has commenced proceedings or an investigation that may result in revocation of NMCT’s tax exempt status.

(g) NMCT represents and warrants that it has a pre-existing relationship with ACF or one or more of ACF’s staff, officers, or directors of ACF’s board.

(h) NMCT represents and warrants that it has received and reviewed ACF’s Investment Policy and that NMCT enters into this Agreement with full knowledge and understanding that ACF makes no guarantee of investment returns.

8. ACF Representations, Warranties, and Covenants.

(a) ACF represents and warrants to NMCT that (i) it has received a ruling from the IRS that it is an organization described in Section 501(c)(3) of the Code; (ii) the facts and circumstances forming the basis for the issuance of the ruling have not substantially changed since the date of issuance thereof; and (c) the ruling has not been revoked.

(b) ACF agrees that it shall promptly notify NMCT in writing in the event the IRS revokes its ruling that ACF is a tax exempt organization described in Section 501(c)(3) of the Code or if the IRS, TRD, or the AG has commenced proceedings or an investigation that may result in the revocation of ACF’s tax exempt status.

(c) ACF represents and warrants that this Agreement has been duly authorized by requisite action of ACF and has been executed on behalf of ACF by persons authorized to do so.

9. No Assignment. No persons other than NMCT may receive any benefit or privilege in return for a distribution from the NMCT Assets. No distributions from the NMCT Assets shall

be used to discharge or satisfy any pledge or obligation of any persons, including members of the board of directors or employees of NMCT.

10. Securities Laws. NMCT acknowledges that ACF is not registered with the Securities and Exchange Commission as an investment advisor under the Investment Advisors Act of 1940, as amended, nor as a broker or dealer under the Exchange Act.

11. Confidentiality. Each party agrees that, except as otherwise set forth in this Agreement or provided by law, or unless compelled by an order of a court or any governmental agency requiring disclosure, it shall keep the contents of this Agreement and any information related to the investment of the NMCT Assets and the transactions contemplated hereunder confidential.

12. Indemnity. Each party hereby agrees to indemnify, defend and hold harmless the other party, its directors, officers, and employees (collectively, the “party”) from and against any and all damages, losses, liabilities, costs, and expenses (including attorneys’ fees and costs) that such party may incur by reason of any untruth, omission, or inaccuracy of the representations, warranties, covenants, statements, or agreements contained herein or in any other document any party has furnished to the other in connection with this Agreement, including, without limitation, defending against any alleged violation of federal or state securities law.

13. No Liability. NMCT agrees that neither ACF nor any affiliated person, including, without limitation, directors, officers, and employees of ACF, shall be liable for or be subject to any damages, expenses, or losses in connection with any act or omission related to or arising out of any services rendered under this Agreement, including, without limitation, services rendered by an investment advisor, except by reason of the gross negligence or willful misconduct of ACF or its directors, officers, or employees.

14. Duration and Termination. This Agreement shall become effective on the Effective Date and may be terminated by either party at any time, upon thirty (30) days’ written notice to the other party.

15. Notices. All notices and other communications to be given hereunder to either party shall be in writing and delivered personally, mailed by certified mail, or emailed. If mailed, a notice or other communication shall be deemed delivered five (5) days after it is deposited in the U.S. mail in a sealed and properly addressed envelope with postage thereon prepaid. If emailed, a notice or other communication shall be deemed to be delivered when the email is sent. All notices and other communications shall be addressed to the individuals in the capacities indicated below at the addresses or email addresses set forth below or such other addresses or email addresses as may be designated in writing hereafter:

ACF: Nicholas Williams, CFO  
624 Tijeras Avenue NW  
Albuquerque, NM 87102  
nick@abqcf.org

Board Chair  
624 Tijeras Avenue NW  
Albuquerque, NM 87102

NMCT:	R. Randall Royster, President & CEO	Board Chair
	624 Tijeras Avenue NW	624 Tijeras Avenue NW
	Albuquerque, NM 87102	Albuquerque, NM 87102
	randy@abqcf.org	

16. Dispute Resolution. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. If mediation is unsuccessful, the dispute shall be settled by binding arbitration under the provisions of the New Mexico Uniform Arbitration Act. The parties shall share the costs of mediation or arbitration equally. The arbitrator's award will be final and binding, and the judgment may be entered in any court of competent jurisdiction.

17. Independent Entities. ACF is acting solely as agent to NMCT for the limited purposes expressly set forth in this Agreement. The arrangements contemplated by this Agreement do not create a partnership, franchise, joint venture, fiduciary, or similar relationship for any purpose. Neither party shall have the power or authority to act for the other or to bind or obligate the other to a third party.

18. Compliance with Laws. The parties shall perform their obligations under this Agreement in accordance with all applicable federal, state and local laws, rules, regulations, and orders.

19. Binding Effect; Assignment. This Agreement shall be binding upon the parties, their respective and permitted successors, transferees, and assignees. Neither party may assign, subcontract, or transfer any of its rights, responsibilities, or obligations under this Agreement without the other party's prior written consent.

20. No Third Party Beneficiaries. This Agreement is for the exclusive benefit of the parties and not for the benefit of any third party including, without limitation, any employee, other current or future affiliate, or any other related party.

21. Entire Agreement; Amendments. This Agreement, and the exhibits and other documents referred to herein, contains the entire agreement between the parties and supersedes all oral agreements, negotiations, and representations between the parties pertaining to the subject matter of this Agreement. Any amendments to this Agreement shall be in writing, signed by an authorized representative of each party, and attached to this Agreement.

22. Further Assurances. The parties shall sign any other documents and take any other actions as may be reasonably necessary to affect the relationships and activities contemplated by this Agreement and/or to account for and document those activities.

23. Severability. The invalidity or unenforceability of any provision or portion herein shall not affect the validity or enforceability of any other provision of this Agreement or the remaining portions of the provision deemed to be invalid or unenforceable.

24. Waiver. Any waiver under this Agreement must be in writing and signed by the party granting the waiver. A waiver by either party of any breach of any provision of this

Agreement shall not be deemed a waiver of any subsequent breach by the other party of the same or of different provisions.

25. Survival. The provisions of this Agreement shall survive the termination of this Agreement to the extent necessary to effectuate the terms contained herein.

26. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

27. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument. Signatures may be transmitted by facsimile, email or other electronic means and shall have the same legal effect as if they were original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

ALBUQUERQUE COMMUNITY FOUNDATION,  
a New Mexico nonprofit corporation

DocuSigned by:  
By: Beverly R. Bendicksen  
E5D027A3680B422  
Beverly Bendicksen, Board Chair

NEW MEXICO COMMUNITY TRUST,  
a New Mexico nonprofit corporation

DocuSigned by:  
By: Carl Alongi  
54BC9B8874C7409...  
Carl Alongi, Board Chair

## SCHEDULE A

These fee schedules reflect the current fee schedules in place at the Albuquerque Community Foundation. Changes to these schedules shall be provided to the New Mexico Community Trust within 10 business days.

### Donor-Advised Fee Schedule:

From \$0 to \$25,000 (Grow a Fund)	0.50%
Above \$25,000-\$1,000,000	1.50%
Above \$1,000,000 to \$2,500,000	1.25%
Above \$2,500,000 to \$5,000,000	1.00%
<b>Above \$5,000,000</b>	<b>0.75%</b>

### Field-of-Interest Fee Schedule:

From \$0 to \$10,000 (Grow a Fund)	0.50%
Above \$10,000-\$1,000,000	1.50%
Above \$1,000,000 to \$2,500,000	1.25%
Above \$2,500,000 to \$5,000,000	1.00%
<b>Above \$5,000,000</b>	<b>0.75%</b>

### Organization Fund Fee Schedule:

\$0-\$25,000 (Grow a fund)	0.25%
\$25,000 - \$100,000	0.85%
\$100,000 - \$250,000	0.75%
\$250,000 - \$500,000	0.65%
\$500,000 - \$1,000,000	0.50%
\$1,000,000 - \$5,000,000	0.40%
<b>Above \$5,000,000</b>	<b>0.25%</b>

## **EXHIBIT A**

### **ALBUQUERQUE COMMUNITY FOUNDATION**

#### **INVESTMENT POLICIES AND PROCEDURES**

December 2005  
Amended February 21, 2006  
Amended May 30, 2006  
Amended January 18, 2007  
Amended September 20, 2007  
Amended December 18, 2007  
Amended May 15, 2009  
Amended March 4, 2011  
Amended May 7, 2012  
Amended August, 5, 2013  
Amended August 4, 2014  
Amended August 3, 2015  
Amended August 15, 2016  
Amended January 4, 2017  
Amended May 22, 2017  
Amended May 21, 2018  
Amended May 21, 2019  
Amended September 14, 2020

#### Previous Policies

February 1, 2000  
February 20, 1996  
November 1, 1994  
May 4, 1988

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## **I. PURPOSE**

The purpose of this investment policy statement (“IPS”) is to assist the Investment Committee (“Committee”) in effectively supervising, monitoring, and evaluating the investments of the Albuquerque Community Foundation (“Foundation”). The Foundation’s investment program is defined in the various sections of the IPS by:

- Stating in a written document the Committee’s attitudes, expectations, objectives, and guidelines for the investment of the Foundation’s assets (“Fund”/“Funds”).
- Setting forth an investment structure for managing all investable Foundation assets. This structure includes various asset classes, investment manager styles, asset allocations, and acceptable ranges that, in total, are expected to produce a sufficient level of overall diversification and total investment return over the long term.
- Providing guidelines for each investment portfolio that control the level of overall risk and liquidity assumed in that portfolio, so that all Foundation assets are managed in accordance with stated objectives.
- Encouraging effective communications between the Committee, the investment consultant, and the investment managers.
- Establishing formalized criteria to monitor, evaluate, and compare the performance results achieved by the investment managers on a regular basis.
- Complying with all fiduciary, prudence, and due diligence requirements that experienced investment professionals would utilize, and with applicable laws, rules, and regulations from various local, state, and federal entities that may impact Foundation assets.

## **II. PREFACE**

The Albuquerque Community Foundation (“Foundation”) is a public foundation established in 1981 to serve a broad range of charitable purposes in the Greater Albuquerque area. Because the Foundation expects to operate in perpetuity, wise stewardship of the funds entrusted to it is essential to the Foundation’s mission. Therefore, the Board of Trustees of the Foundation has adopted the following policies and procedures to ensure its accountability to donors, beneficiaries, and the greater Albuquerque Community.

All Investment Managers (“Managers”) employed by the Foundation shall either be registered with the Securities and Exchange Commission (SEC) under the Investment Advisors Act of 1940 and provide the most recent investment advisor registration form (ADV Part II) filed with the (SEC), or be exempted from registration under the Investment Advisors Act of 1940 exclusion for organizations regulated by the Bank Holding Company Act of 1956. Organizations exempted from Federal-level registration due to having assets under management of less than \$25,000,000 are not permitted. Further, no more than 15% of the total Foundation assets may be assigned to any one Manager. The Investment Committee may, in its discretion, waive these requirements for any registrations for Managers selected for alternative investments arrangements.

This policy will structure its philosophy around the concept of complementary Managers who shall be responsible for specific asset categories and management styles. In implementing its philosophy the Foundation may use separate accounts, commingled funds, mutual funds or partnerships to accomplish its objectives. This document shall outline the following:

- A. The risk/growth posture of the Funds,
- B. An appropriate set of goals and objectives for the selected Managers,
- C. The overall investment objectives and guidelines of the Foundation,
- D. Standards of performance, and
- E. Communication and reporting requirements.

Management of the Fund is a long-term responsibility. Therefore, long-term objectives of at least 20 years are the standard to be observed.

### **III. PHILOSOPHY**

The central objective of the Foundation's investment philosophy is to provide a stable and increasing stream of income for its charitable beneficiaries. Long term, full diversification through all viable investment categories is desired in order to eliminate dependence on one or two categories which could adversely impact the Foundation's returns. In support of this philosophy, this document will outline the following:

- A. The Foundation's position with respect to the risk/growth posture of its investments; and
- B. An appropriate set of goals and objectives for the Foundation's investments.

Annually, the Foundation's Investment Committee will review the "Investment Policies and Procedures" to determine if modifications are necessary or desirable. If modifications are made, they shall be promptly communicated to all investment managers and other interested parties.

### **IV. INVESTMENT OBJECTIVES**

- A. The objective of the total return investment management program is to produce growth and income sufficient to support both donor goals and fund objectives. The long-term objective of total return (the sum of earned interest and dividends and realized and unrealized gains or losses less all investment management costs) shall be CPI plus the current spending rate plus the Foundation's average administration fees as described in Appendix C. Significant emphasis shall be placed upon the preservation and enhancement of the purchasing power of the principal amount of assets in the investment account. The Managers should concentrate their efforts on total return, which will increase the corpus of the fund and thereby increase the purchasing power of the assets under management.
- B. Each asset class approved by the Investment Committee will have a primary benchmark and target allocation. The primary benchmark may be a combination of one or more benchmarks to more closely match the Manager structure of that asset class. The target allocation specified for each asset class will be reviewed and reconfirmed periodically.
- C. Given the objective, the Investment Managers shall recognize the long-term responsibilities and purposes of the Foundation and manage its assets utilizing the same care, skill, prudence and diligence under the circumstances then prevailing that experienced investment professionals would use in like activities for like funds with like aims in accordance and compliance with all applicable laws, rules, and regulations from

local, state, federal, and international political entities as it pertains to fiduciary duties and responsibilities.

- D. A complementary investment objective is that the rate of return of each Manager should compare favorably over comparable periods to that of other Managers of a like style and discipline.
- E. When active management is employed, active Managers are expected to add value net of fees as established per Section XVI Standards of Performance. When passive management is employed, the passive Managers are expected to track the index appropriate for the passive investment.
- F. If donor funds are accepted by the Foundation with specific restrictions as to investments, they shall fall outside the dictums of this policy and shall be administered by the Investment Committee or its designee in accordance with donor specifications.
- G. The investment portfolio of the Foundation shall be handled in a manner consistent with the standards to which a prudent investor would adhere.
- H. The Foundation has a relative performance objective of ranking above median within a peer group of similar organizations. These will be organizations with similar assets, similar asset allocations, and/or similar risk profiles.

#### **V. ROLE OF INVESTMENT COMMITTEE**

The Investment Committee shall consist of 10 members, not including ex-officio members. At least three members shall be appointed from the Board of Trustees. Other non-Board members may serve on the Committee at the discretion of the Chair of the Board of Trustees who shall appoint all members and name the Chairman of the Committee. The Chair of the Board of Trustees is an ex-officio member of the Investment Committee pursuant to the By Laws of the Foundation. As an ex-officio member of the Committee, the Chair has the same rights as the other committee members, but is not obligated to attend meetings of the Committee and is not counted in determining the number required for a quorum or whether a quorum is present. All members shall have the right to vote. A simple majority of members, present in person or attending by telephone or via other electronic meeting platforms, which shall include at least one member of the Board of Trustees, shall constitute a quorum. A majority of the quorum must vote in favor of any actions. Actions may be taken without a meeting if approved unanimously and by all of the Committee via email or fax. The Investment Committee will review and approve the IPS on an annual basis.

Members shall serve three-year terms and may serve a maximum of three consecutive terms. Member terms will be staggered. If a member is unable to complete their term, the Chair of the Board of Trustees will appoint a successor to complete the term. A partial term will not be considered a term for maximum three term purposes.

- A. The Investment Committee will meet at least quarterly to review investment performance, asset allocation, and all other matters related to fiduciary oversight of investment assets.

- B. By action of the Board of Trustees, who is responsible for all stewardship of the Foundation, the Investment Committee has been delegated the following responsibilities:
1. To ensure that the assets of the Foundation are managed in a manner that is consistent with the policies and objectives of the Foundation. In so doing, the Committee will comply with all applicable laws;
  2. To make all investment decisions, with annual review by the Board;
  3. To select and terminate the investment managers;
  4. To develop investment objectives for the various funds of the Foundation and communicate such investment objectives and appropriate guidelines to any investment counsel engaged by the Foundation with respect to the various funds of the Foundation;
  5. To review and evaluate investment results in the context of predetermined performance standards, and implement corrective action as needed; and
  6. To report regularly to the Board of Trustees concerning all investments of the Foundation;
  7. To consider the following factors when making investment decisions:
    - i. Fund duration
    - ii. Fund/institution purposes
    - iii. General economic conditions
    - iv. Effects of inflation/deflation
    - v. Expected total return
    - vi. Other resources
    - vii. Institutional investment policy
    - viii. The expected tax consequences, if any, of investment decisions or strategies;
    - ix. The role that each investment or course of action plays within the overall investment portfolio of the Foundation;
    - x. The needs of the Foundation to make distributions and to preserve capital; and
    - xi. The asset's special relationship or special value, if any, to the charitable purposes of the Foundation.
  8. To review the Foundation's spending policy annually and to make recommendations to the Board of Trustees regarding any suggested changes in the spending policy. All recommendations regarding the spending policy must be presented to the Board of Trustees for approval.
  9. To oversee and implement a separate policy for the management of those gifts that are accepted by the Foundation with specific restrictions as to investments, imposed by the donor.
  10. To oversee the investment management of Life Income Funds (charitable trusts, pooled income funds, etc.) where the Foundation has been named as a

significant remainder interest. The Committee will review the investment management of such funds for reasonableness, however, the Committee has no control over the investment management of such funds. The Committee can only make recommendations for the Board of Trustees to approve regarding changes in investment management of such funds.

## **VI. ROLE OF INVESTMENT CONSULTANT**

The Committee may elect to engage an independent investment-consulting firm to assist the Committee's activities. The Consultant is expected to be proactive in recommending changes in investment strategy, asset allocation, and Investment Managers if the situation warrants change. The Consultant's responsibilities are as follows:

- A. Assisting in the development of investment policies, objectives, and guidelines;
- B. Preparing asset allocation analyses as necessary and recommending asset allocation strategies with respect to the Foundation's objectives;
- C. Recommending Investment Managers;
- D. Preparing and presenting performance evaluation reports in accordance with CFA Institute promulgated standards;
- E. Attending Committee meetings to present evaluation reports no less than semi-annually and at other meetings as requested;
- F. Reviewing contracts and fees for both current and proposed Investment Managers and Custodians;
- G. Providing research on specific issues and opportunities, and assisting the Committee in special tasks;
- H. Assist with the rebalancing process;
- I. Communicating investment policies and objectives to the Investment Managers, and monitoring their adherence to such policies and reporting all violations;
- J. Notifying the Committee of any significant changes in personnel or ownership of the consulting firm;
- K. Notifying the Committee immediately of any litigation or violation of securities regulations in which the consulting firm is involved;
- L. Notifying the Committee of any fee arrangements that generate revenue outside of the consultant's retainer income and might be considered a conflict of interest.
- M. Notifying the Committee of any significant changes in portfolio Managers, personnel or ownership of any investment management firm hired by the Foundation;
- N. Notifying the Committee immediately of any litigation or violation of securities regulations in which any Investment Manager is involved; and
- O. Overall, being proactive with the administration of the Foundation and the Committee in the management of the Foundation.

- P. Provide perspective and insight to Albuquerque Community Foundation administration on investments and financial matters affecting the Foundation;

## VII. INVESTMENT POLICY

The Investment Committee has evaluated the various investment asset classes available, considering the historical rates of return and relative levels of risk associated with each. The Investment Committee recognizes that, over the long-term, the allocation among various asset classes may be the single most important determinant of the Foundation's investment performance. The Investment Committee further recommends the investment of all Foundation assets in accordance with the following policy guidelines.

### A. Asset Allocation

1. The single most important decision made by the Committee is the Policy Asset Allocation decision. Investment research has determined that a significant portion of a portfolio's investment behavior can be attributed to: (1) the asset classes/styles which are employed by the Foundation; and (2) the weighting of each asset class/style. The Committee, with guidance and recommendations from their Consultant, shall review the asset allocation on an ongoing basis and recommend revisions as necessary. The overall asset allocation is stated as a range. The Committee is charged with establishing the specific asset allocation within the allowable range.
2. The Policy Asset Allocation shall be determined based on a comprehensive asset allocation study completed by the Consultant and reviewed from time to time by the Committee. The Policy Asset Allocation of the Foundation, as presented in Appendix B, is designed to give balance to the overall structure of the Foundation's investment program over the time horizon, which will be measured over twenty years. However, many factors over time may necessitate an asset allocation review and possible rebalancing. These factors include an ongoing assessment by the Consultant and the Committee of the comparative intermediate or long-term outlook for all available types of asset classes and styles.

### B. Risk Guidelines and Limits

1. Diversification
  - a) Across Different Investment Categories: The Foundation will be diversified across four broad investment categories: equity, fixed income, real assets, and multi-strategy. No single investment category may be greater than 60% of the Foundation's investments.
  - b) Across investment managers: The Foundation will be diversified across several external investment managers. No single strategy of an investment manager will represent more than 15% of the Foundation's investments.
  - c) Within an investment manager's Organization: The Foundation's investment with any single Investment manager will not comprise more than 10% of the manager's firm-wide assets under management.
  - d) Among Securities (Positions): For investment managers who conduct an investment process that is intended to result in a diversified portfolio,

single position sizes in excess of 10% of that investment manager's portfolio will be highlighted in the quarterly report to the Foundation. For investment managers who conduct an investment process that is expected to result in a concentrated portfolio, the degree of concentration must be monitored by the Consultant and included in the Consultant's quarterly report to the Foundation.

## 2. Leverage

The Foundation understands that "leverage" is an attempt to quantify the exposure of an investment manager's portfolio, not necessarily that portfolio's risk. The Foundation recognizes that leverage can be a useful tool for investment managers, but it must be used judiciously, subject to an investment manager's experience and the overall volatility of the investment category and strategies/structures employed.

- a) MEASUREMENT: For purposes of this Statement, and for ongoing monitoring of investment managers and the aggregate investments of the Foundation, "leverage" will be defined as the notional long exposure of a portfolio plus the absolute value of the notional short exposure of that portfolio, divided by net capital.
- b) LIMIT: The Foundation's aggregate leverage across all investments may not exceed two times. Any leverage exceeding one time must be due to risk-mitigating positions such as short positions that offset long positions. The Foundation will avoid highly levered investment strategies.

## 3. Volatility

- a) MEASUREMENT: For purposes of this Statement, and for ongoing monitoring of investment managers and the aggregate investments of the Foundation, "volatility" will be defined as the annualized standard deviation of total returns.
- b) LIMIT: The Foundation's aggregate volatility is expected to be less than a blend of 70% the volatility of global equities, as measured by the MSCI World Index, and 30% of global investment grade broad fixed income securities, as measured by the Bloomberg Global Aggregate Bond Index over any three-year period. Any one of the investment managers for the Foundation may exhibit volatility greater than this limit, but in that case the investment manager must provide significant diversification benefits to the aggregate Foundation investment portfolio so that the aggregate portfolio remains within this volatility risk limit.

## 4. Key Market Exposure

- a) MEASUREMENT: For purposes of this Statement, and for ongoing monitoring of investment managers and the aggregate investments of the Foundation, Key Market Exposure is the primary measure of the portfolio's risk within an asset class. By no means are the guidelines below the sole way to measure risk within an asset class portfolio; however, the Consultant will monitor and report quarterly on the

Foundation's exposure to at least the following specific Key Market Exposures:

- (1) For Equity: "Net Market Exposure", defined as the notional market value of long positions, minus the notional market value of short positions.
- (2) For Fixed Income: "Duration", defined as effective interest rate duration.
- (3) For Real Assets: "Net Market Exposure", defined as the notional market value of long positions, minus the notional market value of short positions.
- (4) For Multi-Strategy: "Net Market Exposure", defined as the notional market value of long positions, minus the notional market value of short positions.

b) LIMITS:

- (1) For Equity: "Net Market Exposure" of the aggregate of the Foundation's equity managers may not exceed 1.5 times capital.
- (2) For Fixed Income: "Duration" of the aggregate of the Foundation's fixed income managers may not exceed 1.5 times the duration of the Bloomberg Aggregate Bond Index (or whatever benchmark is deemed most appropriate for the Foundation's liabilities, as may be determined from time to time).
- (3) For Real Assets: "Net Market Exposure" of the aggregate of the Foundation's real asset managers may not exceed 1.5 times capital.
- (4) For Multi-Strategy: "Net Market Exposure" of the aggregate of the Foundation's multi-strategy managers may not exceed 1.5 times capital.

5. Total Return Policy

The Board has adopted a "total return" approach to calculating investment returns.

In recognition of these facts, the Committee will consider the Foundation's total return from both income and net realized and unrealized capital gains when making distributions. When distributions are made, they will be withdrawn from the Foundation regardless of the portion of the total return that is from capital gains or from income.

## **VIII. INVESTMENT STRATEGY**

### Permissible Investments

The universe of types of securities is large and continues to evolve. The Foundation's overall risk profile is controlled mainly through setting a Policy Asset Allocation, and by establishing risk limits for the composition of the portfolio. These limits were defined earlier in this Statement. The broad universe of securities used by similarly sophisticated institutions is allowable subject to those limits and the Policy Asset Allocation, including:

1. Domestic common stocks
2. International common stocks
3. Domestic bonds
4. International bonds
5. Cash and cash equivalent securities
6. Real estate and real estate securities
7. Commodities, including timber
8. Derivatives on the above securities, when used within the stated risk limits
9. Private funds investing in debt, equities, and real property
10. Hedge funds and multi-strategy funds

These securities may be used by traditional long-only managers or by alternative investment managers subject to the stated risk limits.

## **IX. INVESTMENT POLICIES AND PERFORMANCE GOALS FOR MUTUAL, COMINGLED AND ALTERNATIVE FUNDS**

The Foundation will generally give investment managers broad latitude to invest in a wide variety of securities and instruments, subject to each investment manager's particular area of expertise. The vast majority of the Foundation's investments may be in pooled vehicles such as mutual funds, commingled funds, or other commingled fund structures for alternative investments. As the Foundation cannot direct the particular investment policies of these types of funds, it is understood that these funds will be governed by their own written investment guidelines and fund documents.

Nevertheless, the broad guidelines outlined below will govern the selection and retention of appropriate vehicles:

### A. Aggregate Assets

The Committee and the Consultant will determine for each investment manager whether the level of aggregate assets under management 1) is large enough to ensure sufficient diversification, efficient trading, and economies of scale in administrative expenses and transaction costs and 2) is not too large or too small to cause the investment manager to deviate from the portfolio construction methods upon which the performance record was built.

- ### B.
- The Committee and the Consultant will monitor the organizations providing investment services to the mutual or commingled funds, and report any changes which may negatively affect the consistency of the investment method.

- C. The Committee and the Consultant will monitor both management fees and administrative expenses, to ensure that expense levels are appropriate and reasonable, and within normal and customary ranges.
- D. The Committee and the Consultant will establish general expectations of each fund's or pool's aggregate portfolio characteristics to create proper diversification within the Foundation's portfolio as a whole, fulfill specific needs or purposes within the portfolio, and comply with the investment strategy and asset allocation policy.

**X. PROXY VOTING**

The Investment Committee is mindful of its fiduciary obligations with respect to the voting of proxies of companies whose securities are owned by the Foundation.

Because of the complexity of issues and further because of the direct impact on investment values, it is the Investment Committee's considered belief that the Investment Managers that are employed by the Foundation are best suited to vote the proxies of shares held in the portfolios they manage.

Therefore, as part of the Foundation's Investment Policy and the Investment Manager guidelines, the Investment Committee hereby instructs the Investment Managers to vote proxies of companies in accordance with their own guidelines and policies and in the best interest of the Foundation.

All Managers voting proxies on behalf of the Foundation may be asked by the Investment Committee to provide their firm's proxy policy and a report showing securities voted, issues involved and the vote made.

**XI. PROCEDURES AND PRACTICES FOR HANDLING CASH AND INVESTMENTS**

**A. Operating and Temporary Funds**

1. All receipts to be deposited in the checking account.
2. Transfer to an interest-bearing account whenever balance reaches an appropriate amount, keeping the checking account balance to a minimum.
3. Expenditures to be made from checking account.
4. Temporary funds may be combined with operating funds.

**B. Foundation Endowment Funds**

1. Principal and income is to be invested in accordance with investment policy.
2. Endowment funds are combined in an investment pool in order to gain economies of scale with respect to purchasing and selling investments, administration, and fees.
3. An endowment fund acquires units in the investment pool when donations to the fund are transferred to the investment pool and exchanges units when grants/gifts are made or fees paid from the pool. Monthly, the Foundation will combine all gifts and expenditures within the funds and will adjust pool units. The number of units each fund acquires or exchanges is determined by dividing the dollar amount of the fund's combined transactions (donations and expenditures) for the month by the pool's per unit value as of the day of the transfer.

- C. Contributions Received in Stocks and Bonds
  - 1. The sale of thinly-traded and closely-held stock can be liquidated with the approval of the Investment Committee in a manner to reasonably maximize return to the Foundation.
  - 2. The sale of gifts of publicly-traded stocks with a value of \$25,000 or less can be authorized by the President & CEO or Finance Director as soon as is practicable upon receipt of the gift. Accepted gifts of stock valued at more than \$25,000 will be referred to the Chair of the Investment Committee, for review of the nature of the stock and authorization of the sale.
- D. Contributions Received in Real Estate
  - 1. Sale or investment recommendations to be made to the Investment Committee after review by the Foundation's Real Estate Sub-Committee. Any such actions taken are to be reported to the full Board at its next meeting.
  - 2. Real estate portfolio to be reviewed by Real Estate Sub-committee at least annually.
- E. Contributions Received in Other Forms
  - 1. Investment Committee will seek expert advice as to asset allocation and portfolio performance evaluation.
  - 2. Investment Committee will periodically monitor and review all investments.

**XII. DISTRIBUTION OF FUNDS, ALLOCATION OF EARNINGS, AND FEES**

The Foundation spending policy recognizes the inherent conflict between serving current community needs while maximizing the growth of Foundation assets. In seeking to maintain a balance between these diverse objectives, the Foundation has adopted the following rules:

- A. Except as provided below, distributions will be made in accordance with the Foundation's spending policy in Appendix C, as amended from time to time.
- B. A copy of the Spending Policy incorporated in this IPS shall be provided to each Donor who establishes an endowment fund with the Foundation.
- C. If there is any conflict between the terms of the Spending Policy and the terms of the endowment agreement or other gift instrument, the terms of the endowment agreement or other gift instrument shall govern.

**XIII. RE-BALANCING**

The Investment Committee has established specific asset allocation targets within the ranges of its Investment Policy. To assure allocations consistent with the policy, the Investment Committee has developed a systematic re-balancing policy.

A. Asset Class Re-Balancing

The following policies will be followed regarding equities and fixed income portfolios:

- 1. Valuation and monitoring of asset classes in relation to their targets will be done monthly as available from the custodian.

2. The allocations to each asset class will remain within 20% of its target weighting.
3. When asset classes are not within 20% of their target weights, shifts will be made to bring the asset classes within their 20% boundaries.
4. Investments such as hedge funds, private equity, and real assets shall be maintained within 20% of their current targets if possible. Since little movement of capital can be made within these asset classes due to their illiquid nature, the Investment Committee must review the portfolio to determine whether investments within the asset classes will need to be sold to return to policy or if the out-of-balance levels may be extended temporarily.

#### **XIV. GUIDELINES FOR THE CUSTODIAN**

The Investment Committee recognizes that accurate and timely completion of custodial functions is necessary for effective investment management and accurate records. The Investment Committee identifies the following as responsibilities of the custodian for the Foundation:

- A. Provide complete custody and depository services for the designated accounts.
- B. Provide for investment of any cash to avoid lingering uninvested amounts.
- C. Implement in a timely and effective manner the investment actions as directed by the Investment Manager(s).
- D. Collect all income and principal realizable and properly report on the periodic statements.
- E. Provide monthly and annual accounting statements as well as on-line real time accounting for the Foundation, including all transactions; these should be based on accurate security values both for cost and market value. These reports should be provided within a time frame acceptable to the Committee.
- F. Report to the Foundation staff situations where security pricing is either not possible or subject to considerable uncertainty.
- G. Distribution to the Investment Manager(s) in a timely manner all proxy voting materials.
- H. Provide assistance to the Investment Committee, the Investment Consultant, and staff, to complete such activities as the annual audit, transaction verification or unique issues.

#### **XV. COMMUNICATION AND REPORTING**

The Investment Manager(s) are responsible for frequent and open communication with the Investment Consultant on all significant matters pertaining to investment policies and the management of the Fund's assets. Some of the key reporting responsibilities include the obligation to:

- A. Inform the Investment Consultant of major changes in any of the following:
  1. The Investment Manager's investment outlook, investment strategy and portfolio structure.
  2. The ownership, organizational structure, financial condition or senior personnel staffing of each investment Manager.
- B. Provide the Investment Consultant with quarterly transaction, valuation and performance reports to coincide with the Foundation's fiscal quarters.

- C. Ensure that all documents, exhibits and written materials that will be used during the quarterly conferences between the Investment Committee and the Investment Managers be submitted to and received by the Investment Committee at least 5 business days in advance of these conferences.
- D. Provide the Investment Consultant with proof of liability and fiduciary insurance coverage.

#### **XVI. STANDARDS OF PERFORMANCE**

The performance of the Foundation will be reviewed at least annually to determine the continued feasibility of achieving the investment objectives and the appropriateness of the investment policy for achieving these objectives.

It is not expected that the investment policy will change frequently. In particular, short-term changes in the financial markets should not require an adjustment to the maximum commitment levels by asset class as set forth by this investment policy.

In consideration of the Foundation's goals and objectives, several standards will be utilized in evaluating investment performance as opposed to a single measurement. These standards reflect several aspects of investment performance, including the Foundation's specific objectives, the market indices and the performance of other fund managers.

Investment manager(s) will be reviewed to determine whether performance is within the investment policy guidelines and if asset allocation, security selection, and market timing decisions were reasonable. However, specific quantitative measures, especially the more absolute-oriented measures, will normally be considered of more importance during the three- to five-year investment performance horizon.

Specific bases for performance evaluation are:

##### **A. Individual Investment Managers/Mutual Funds**

1. The Committee expects that, over a fair market cycle, each investment manager/mutual fund will exceed their respective passive index benchmark and rank above median within their respective active peer universe benchmark. Performance benchmarks for each investment manager/mutual fund are outlined in Appendix A. Market cycles may differ markedly in length, and there is no standardized measure for a market cycle's term. For this purpose, a full market cycle encompasses both a down leg and an up leg, in either order. The up or down portions each shall be of at least two consecutive quarters in length. Thus, a full market cycle may be as short as one year, though generally most market cycles are expected to last from three to five years.
2. Evaluation of each investment manager's performance will be conducted quarterly to include not only measurements with respect to the standards described above, but an overall qualitative evaluation of strategy during the quarter and other periods ending on that date.

##### **B. Asset Classes**

Investment performance of various classes of securities will be compared, on a time and dollar weighted basis, with that of unmanaged market indices as well as with an appropriate universe of professionally managed funds.

1. Equity performance will be compared with nationally recognized equity indices such as the S&P 500, the Russell 3000, the Russell 2000, the Russell 2500 or Morgan Stanley Capital International All Country World Index or with a nationally recognized style index depending on the Manager's orientation towards growth or value. Equity performance will also be compared to an appropriate peer group universe. The benchmark measures adopted for equity performance will be mutually acceptable to the Manager(s) and the Investment Committee and explicitly stated in the Manager(s) contract when separate account managers are used.
  2. Fixed income performance will be compared with nationally recognized bond indices such as the Bloomberg U.S. Aggregate Bond Index, Citigroup World Government Bond Index, or JP Morgan Emerging Markets Index. Fixed income performance will also be compared to an appropriate peer group universe. The benchmark measures adopted for fixed income performance will be mutually acceptable to the Manager(s) and the Investment Committee and explicitly stated in the Manager(s) contract when separate account managers are used.
  3. Real Estate performance will be compared with the total return of the National Council of Real Estate Investment Fiduciaries Index (NCREIF) or the National Association of Real Estate Investment Trusts (NAREIT), as appropriate for the manager's style.
  4. Private Capital fund returns will be compared over the long term, 5-10 years, to a Kaplan Schoar public markets equivalent using a predetermined public markets benchmark appropriate for each fund's strategy.
  5. Hedge Fund performance will be compared to the relevant Hedge Fund Research (HFRI equal weighted) indices.
- C. Total Fund
1. The Committee expects the Foundation's total rate of return over the next three to five year period to equal or exceed the targeted total rate of return of CPI plus the Foundation's current spending distribution plus Foundation's average administration fees as defined in Appendix C. While this rate of return is the long term goal of the Foundation, it is also understood that markets are volatile and that periods of underperformance are possible over shorter time periods such as three to five years.
  2. The Committee expects the Foundation's total rate of return over the next five year period to exceed the total rate of return of a hypothetical fund invested in a benchmark portfolio constructed using the asset class weightings of the Foundation and the respective index returns for each of those asset classes.
  3. The extent to which the volatility objectives as established herein are satisfied or exceeded will be determined by computing the mean absolute deviation of the investment account's total rate of return from quarter to quarter and comparing this with the same statistic measured for a corresponding market portfolio with asset class weights identical to that of the Foundation Investment Policy.

The Committee expects the Foundation's return to rank above median within an appropriate universe. This universe will be comprised of organizations with similar assets levels, asset allocations, and/or risk profiles.

**XVII. CONFLICTS OF INTEREST**

All persons responsible for investment decisions or who are involved in the management of the Foundation or who are consulting to, or providing any advice whatsoever to the Committee, shall disclose in writing at the beginning of any discussion or consideration by the Committee, any relationships, material beneficial ownership, or other material interest(s) which the person has or may reasonably be expected to have, with respect to any investment issue under consideration. The Committee will require such persons to remove themselves from the decision-making process.

Any members of the Committee responsible for investment decisions or who are involved in the management of the Foundation shall refuse any remuneration, commission, gift, favor, service or benefit that might influence them in the discharge of their duties, except as disclosed in writing to and agreed upon in writing by the Committee. The intent of this provision is to eliminate conflicts of interest between committee membership and the Foundation. Failure to disclose any material benefit shall be grounds for immediate removal from the Committee. This provision shall not preclude the payment of ordinary fees and expenses to the Foundation's custodian(s), Investment Managers, or Consultant in the course of their services on behalf of the Foundation.

**APPENDIX A: INVESTMENT MANAGERS AND PERFORMANCE BENCHMARKS**

Revised June 22, 2021

<b><u>Investment Manager</u></b>	<b><u>Comparison Universe (if available)</u></b>	<b><u>Index Benchmark</u></b>
Dodge & Cox	Global Equity Universe	MSCI ACWI Value
BNY Mellon (Walter Scott)	Global Equity Universe	MSCI World Growth
Vanguard Institutional Index	US Large Cap Universe	S&P 500 Index
BlackRock Small Cap Core	US Small Cap Universe	Russell 2000
RBC Emerging Markets Equity	International Emerging Equity Universe	MSCI Emerging Markets
Commonfund Private Equity Partners	Private Equity	MSCI ACWI
The Investment Fund for Foundations	Private Equity	MSCI ACWI
Glouston	Private Equity	MSCI ACWI
Quantum	Private Equity	MSCI ACWI
Pantheon	Private Equity	MSCI ACWI
Audax	Private Equity	MSCI ACWI
GI Partners Fund VI	Private Equity	MSCI ACWI
PIMCO Bravo II	Real Estate Debt	Bloomberg Global Aggregate
Baird Aggregate Bond	Core Fixed Income Universe	Bloomberg U.S. Aggregate
BlackRock Strategic Income Opportunities	Core Plus Fixed Income Universe	Bloomberg U.S. Universal
PIMCO Inflation Response Multi-Asset	Real Assets	PIMCO IRMA Index
ASB Allegiance Real Estate	Real Estate	NCREIF ODCE Index
Invesco US Income	Real Estate	NCREIF ODCE Index
Bridge Investment Group	Real Estate	NCREIF ODCE Index
BlackRock Tempus	Multi-Strategy	HFRI Event Driven Distressed/Restructuring
Hudson Bay International Fund, Ltd.	Multi-Strategy	HFRI Relative Value Multi-Strategy Index
HG Vora Special Opportunities Fund, Ltd.	Multi-Strategy	HFRI Event Driven (Total) Index
Alyeska Aleutian Fund, Ltd.	Multi-Strategy	HFRI Equity Hedge: Equity Market Neutral Index

**APPENDIX B: POLICY ASSET ALLOCATION**

Revised June 22, 2021

**POLICY ASSET ALLOCATION**

ASSET CLASS	TARGET	RANGE
<i>Total U.S. Equity</i>	26%	16% - 36%
<i>Total Non-U.S. Equity</i>	17%	7% - 27%
<i>Total Fixed Income/Cash</i>	10%	0% - 20%
<i>Total Real Estate</i>	15%	10% - 20%
<i>Total Real Assets</i>	5%	0% - 15%
<i>Total Multi-Strategy</i>	14%	4% - 24%
<i>Total Private Equity</i>	13%	3% - 23%
<i>Total</i>	100%	100%

Policy Asset Allocation ranges represent +/- 10% deviations from Target Allocation. These ranges may be modified from time to time at the discretion of the Committee within the provisions of the Statement of Investment Policies and Procedures.

**APPENDIX C: SPENDING POLICY AND ADMINISTRATIVE FEES****Spending Policy**

The recommended standard spending policy will be to distribute 4% of the time-weighted average balance of each fund for the previous twenty quarters calculated as of December 31st. The time-weighted average will be computed by first taking the fund's monthly ending balance after allocation of income, gains and fees and averaging it for the quarter and then averaging the quarter ending balances. If a fund does not have historical fund balances for twenty quarters then it shall instead use the total number of historical fund balances that it has until such time it has a twenty-quarter history. Generally, a fund must have a minimum of four historical quarters before a distribution is made. Donor Advised and organization fund agreements allow additional distributions. The Foundation will allow nonprofit organizations to receive a distribution of up to 5.5% of the time-weighted average balance of a fund. Nonprofit organizations which want to take a distribution higher than the recommended standard distribution must contact the Foundation to discuss the decision. The Foundation will discuss the impact of taking a distribution that is higher than the recommended amount. The nonprofit organization Board Chair would be required to sign a form acknowledging the discussion of its options and must attach a copy of the board meeting minutes which reflect the board approved decision.

**Administrative Fees**

Each Fund in the Investment Pool shares the cost of a professional staff as well as the costs associated with procuring the expertise of the investment consultant and investment managers. The Foundation monitors fund investments, pays out grants from the income and oversees all aspects of the investment program. Therefore, the Foundation will charge each fund an administrative fee based on the net asset value of each fund in accordance with its most current fee schedule.

## **EXHIBIT B**

### BYLAWS

### OF

### NEW MEXICO COMMUNITY TRUST

#### I

### PURPOSE

New Mexico Community Trust (the "NMCT") will be a grant-making body with a broad range of philanthropic interests providing donors with the opportunity to consider total community needs. NMCT will concentrate its efforts throughout the State of New Mexico, giving special attention to current and changing community needs. Additionally, NMCT will be providing back-office support services to other community foundations and/or non-profit organizations.

#### II

### MEMBERS

A. Membership. NMCT shall have one or more Members. The initial Member shall be Albuquerque Community Foundation, a New Mexico nonprofit corporation. New Members may be admitted by unanimous consent of the Members.

B. Annual Meetings. The annual meeting of the Members for the election of the Trustees and the transaction of such other business as may properly come before it shall be held immediately prior to the last regularly held Board meeting of the fiscal year, or as soon thereafter as may be convenient. The Chair of the Board of NMCT shall serve as the Chair of all meetings.

C. Special Meetings. Special meetings of the Members may be called at any time by the Secretary upon the request of the Chair or no less than one-half (1/2) of the Members.

D. Notice of Meetings. Notice of every meeting of the Members shall be given to each Member not less than five (5) days before the day on which the meeting is to be held. Notice of special meetings shall be given to each Member at least two (2) days in advance of the special. Notice of special meetings shall state the purpose or purposes for which the meeting is called, and the notice of any meeting shall state the time and the location where it is to be held. Such notice shall be in writing delivered by mail or by e-mail at the direction of the Chair, the Secretary, or the persons calling the

meeting. Any Member may waive notice of any meeting. The attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transacting of business because the meeting is not legally called or convened.

E. Meetings by Telephone Conference Calls. Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting by the aforesaid means shall constitute presence in person at such meeting.

F. Quorum; Voting. A majority of the number of Members shall constitute a quorum for the transaction of business at any regular or special meeting. A quorum, once attained at a meeting, shall be deemed to continue until adjournment notwithstanding a voluntary withdrawal of enough directors to leave less than a quorum. The act of the majority of the Members present at a meeting at which a quorum is present, unless otherwise provided by law, these Bylaws or the Articles of Incorporation, shall be the act of the Members. If less than a majority of the Members are present at any meeting, a majority of the Members present may adjourn the meeting from time to time without further notice.

G. Action Without a Meeting. Any action required to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the action being taken.

### III

#### BOARD OF TRUSTEES

A. Number, Qualification, Removal, Resignation, Vacancies: The Board of NMCT will consist of Trustees who serve as Directors of the NMCT, and all reference to "Trustee" or "Trustees" will be deemed to refer to "Director" or "Directors" when required by law. The Board will consist of not less than three (3) nor more than twenty-five (25) elected Trustees and the immediate past Chair of the Board. Subject to such limitation, the number of Trustees may be increased or decreased from time to time by resolution of the Members. No decrease shall have the effect of shortening the term of any incumbent Trustee. In the absence of a resolution fixing the number of Trustees, the number shall be the same as that stated in the Articles of Incorporation. Directors need not be residents of the State of New Mexico. The Trustees constituting the first Board shall be named in the Articles of Incorporation and shall hold office until the first annual election of Trustees. A Trustee may be removed with or without cause by an

affirmative vote of a majority of the Members or may resign by giving 15 days written notice to the Board. Any vacancy occurring in the Board or any trusteeship to be filled by reason of an increase in the number of Trustees may be filled by the affirmative vote of a majority of the Members. A Trustee elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office. Any trusteeship to be filled by reason of an increase in the number of Trustees shall be filled by the Members for a term of office continuing only until the next Annual Meeting of the Members.

B. Election and Tenure: The Governance Committee may nominate persons to fill the Trusteeships in accordance with the policies and procedures set forth in these Bylaws. Trustees will be elected at the Annual Meeting of the Members. Trustees will be elected to serve for a three (3) year term, and the Members shall establish and maintain a structure of staggered terms such that approximately one-third (1/3) of the Trustees are elected each year. Each Trustee shall hold office for the term for which he or she is elected and until his or her successor has been elected and qualified. No Trustee will serve more than three (3) consecutive terms except; the immediate past Chair will automatically become a Trustee for one (1) year if the immediate past Chair's third consecutive term has expired.

C. Powers and Duties: The Board shall have control and management of the business and affairs of NMCT. The act of the Trustees shall in all cases be the act of the Board, provided a quorum is present. The Trustees may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with law or these Bylaws. The Board shall have Variance Power, as defined by the United States Treasury Regulation as the power to modify or eliminate any restriction, limitation, or condition on the distribution of funds, including their use for any specified purposes or their distribution to specific organizations, by a majority vote of the Board at an Annual, Regular, or Special Meeting, if, in the sole judgment of the Board such restriction, limitation or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with charitable, scientific or educational objectives, subject to the purpose and intent of the NMCT.

D. Meetings: The Annual Meeting of the Board for the purpose of electing Officers and for the transaction of any other business which may come before the meeting will be the last regularly held Board meeting of the fiscal year. Regular meetings will be held at least quarterly. The Board may provide, by resolution, the time and place, either within or without the State of New Mexico, for the holding of regular meetings without other notice than such resolution. Special Meetings of the Board may be called by a majority of the Trustees or the Chair.

E. Notice: Written Notice stating the time, place and, if a Special Meeting, the purpose, will be delivered not less than five days before the meeting date either by mail or by e-mail at the direction of the Chair, the Secretary, or the persons calling the meeting.

F. Quorum, Voting: A minimum of a simple majority of the Trustees then in office will constitute a quorum at Board Meetings. A quorum once attained continues until adjournment despite a voluntary withdrawal of a Trustee(s), which leaves less than a quorum. The Trustees will act only as a Board with each Trustee having one (1) vote. The act of a majority of Trustees present at a meeting at which a quorum is present will be the act of the Board unless a greater proportion is required by law or by these Bylaws.

G. Manifestation of Dissent: A Trustee who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Trustee's dissent shall be entered in the minutes of the meeting or unless the Trustee shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the NMCT immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Trustee who voted in favor of such action.

H. Meetings by Telephone Conference Calls: Trustees or any members of any committee designated by the Trustees may participate in a meeting of the Board or such committee by means of conference telephone, video conference, or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting by the aforesaid means shall constitute presence in person at such meeting.

I. Written Consent: Any action which may be taken at a meeting of the Trustees or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

#### IV

#### OFFICERS

A. Number, Tenure, Qualification, Election, Removal, Resignation, Vacancies: The Officers of the NMCT will be a Chair, Chair-Elect, Immediate Past-Chair, Secretary and Treasurer, and such other officers as the Board may decide from time to time. Officers will be elected by the Board (other than the

Immediate Past-Chair who automatically succeeds to the office) at the Annual Meeting from persons nominated by the Governance Committee to serve one-year terms. Each officer shall hold office until a successor has been duly elected and qualified, or until removed as hereinafter provided. Except for the position of Secretary and Treasurer, officers cannot serve more than three consecutive terms in one office. Officers must be Trustees when they serve their terms as officers; however, the Governance Committee may nominate persons for Treasurer who is not then a Trustee but who has also been nominated as a Trustee. If the nominees are not elected as Trustees, the nominees' names will be removed from the roster for election of officers before the election of officers. An Officer may be removed with or without cause by two-thirds (2/3) of the Trustees or may resign. Vacancies and newly created offices will be filled by the Board. One person may hold more than one office, except that no person will be both Chair and Secretary or Chair and Treasurer. Officers will perform the duties and have the power assigned by the Board, incident to the office, and provided in these Bylaws.

B. Chair and Chair-Elect: The Chair will be an ex-officio member of all committees, will preside at all Board meetings, and in the absence of a President/CEO, when authorized, will execute and deliver documents in the name of the NMCT. The Chair-Elect during the absence, disability or failure to act of the Chair, will have the authority to act in the capacity of the Chair.

C. Secretary: The Secretary will oversee the custody of all corporate records of the NMCT and approve the minutes of all meetings, may give all Notices required and, when authorized, will execute, attest, seal and deliver documents of the NMCT.

D. Treasurer: The Treasurer will oversee the designated NMCT staff person in keeping correct and complete books and records of account for the NMCT. When authorized by the Chair, or in the absence of the Chair and the Chair-Elect, the Treasurer will execute and deliver documents in the name of the NMCT.

E. President/CEO: The Board may appoint a President/CEO, upon such terms and conditions as it deems proper, who will be responsible for the conduct of the NMCT's business within the prescribed policies of the Board. The President/CEO will be the chief administrative and executive officer and will, within the Board's policies, hire, assign, supervise and terminate employees of the NMCT, and, when authorized, will execute and deliver documents in the name of the NMCT.

V

COMMITTEES

A. Executive Committee:

1. Number, Qualification, Removal, Resignation, Vacancies: The Executive Committee will consist of the Chair, Chair-Elect, Immediate Past-Chair, Secretary, Treasurer and, at the will of the Chair, one Trustee-at-large. An Executive Committee member may be removed with or without cause by two-thirds (2/3) of the Trustees or may resign. Vacancies may be filled by a vote of the majority of the Trustees.

2. Meetings: Meetings of the Executive Committee may be called by any member of the Executive Committee and will be held at the time and place fixed by the person calling the meeting on written (email or letter) or oral notice given to each Executive Committee member.

3. Authority, Quorum, Voting: Except for the power to allocate grant funds, amend the Bylaws, remove and elect Trustees and Officers, and as may otherwise be provided by these Bylaws or by the Board of Trustees, the Executive Committee will, during the intervals between the meetings of the Board, possess and may exercise all of the powers of the Board. Any action by the Executive Committee will be reported to the Board, and such action will be subject to revision by the Board, although no rights of third parties will be affected by any such revision. A majority of the Executive Committee will constitute a quorum at Meetings. A quorum once attained continues until adjournment despite a voluntary withdrawal of a member(s) which leaves less than a quorum. The Committee will act only as a Committee with each member having one vote. The act of a majority of members present at a meeting at which a quorum is present will be the act of the Committee.

B. Governance Committee: The Governance Committee will consist of at least three (3) members appointed by the Chair. Two (2) members of the Governance Committee must be Trustees. The Chair will appoint the Committee Chair. The Governance Committee may make nominations for Trusteeships and Officers as required by these Bylaws, in addition to other actions as requested by the Chair. A member of the Governance Committee may be removed with or without cause by the Chair or may resign. Vacancies shall be filled by the Chair.

C. Other Committees: The Chair may designate and appoint other committees as deemed necessary by the Chair or the Board.

D. Action by Committee, Delegation of Authority: A majority of the members of a Committee may fix its rules of procedure. Any action by a Committee will be reported to the Board at a Board meeting succeeding such action and will be subject to revision by the Board although no rights of third parties will be affected by any such revision. The designation and appointment of any Committee and the delegation of authority thereto, will not relieve the Board, or any individual Trustee, of any responsibility imposed upon the Board or an individual Trustee.

VI

GIFTS TO THE NMCT

A. NMCT's Purpose and Intent: It is the NMCT's intent to accept all gifts to the NMCT in furtherance of the purpose of the NMCT, as stated in the Articles of Incorporation and these Bylaws, and to use such gifts for (i) charitable purposes; (ii) the production of a reasonable return over a reasonable period of time; and (iii) such purposes and in such manner as not to disqualify the gift from deduction as a charitable contribution, gift, or bequest in computing any federal income, gift or estate tax of the donor or the donor's estate, and not to disqualify the NMCT from exemption from federal income tax as a charitable, publicly supported organization.

B. Gifts to the NMCT: Donors may make gifts to the NMCT by naming or otherwise identifying the NMCT, whether or not a trustee, custodian, or agent is designated to receive the property contributed. Prior to acceptance, all gifts to the NMCT will be reviewed in accordance with the Gift Acceptance Policies and Procedures.

C. Presumption of Donor's Intent: Each gift to the NMCT will be presumed to be intended (i) to be used only for charitable purposes; and (ii) to be used only for such of those purposes and in such a manner as not to disqualify the gift from deduction as a charitable contribution, gift, or bequest in computing any federal income, gift, or estate tax of the donor or the donor's estate, and not to disqualify the NMCT from exemption from federal income tax as a charitable publicly supported organization.

D. Acceptance of NMCT's Articles and Bylaws: Each donor, by making a gift to the NMCT, (i) agrees to all the terms of the Articles of Incorporation and Bylaws of the NMCT as amended from time to time ("Organization Documents"); (ii) agrees that any fund created by the gift will be subject to the provisions for the NMCT's purpose and intent and the presumption of donor's intent for all restrictions or conditions placed on the gift by the Organization Documents or any other instrument affecting the gift; and (iii) agrees that any fund created by the gift will also be subject to any trust, custodian or agency

agreement between the NMCT and trustees, custodians or agents having custody of the funds of the NMCT.

E. Donor Restrictions: Any donor may, with respect to a gift made by such donor to the NMCT and within the limits of the Organization Documents and policies of the NMCT, give directions in the instrument of gift or transfer about the (i) field of charitable purposes or particular charitable organizations or purposes to be supported; and (ii) a name for the gift as a memorial for a gift given, or an addition to a fund previously held, or request anonymity for the gift. However, a donor may not impose any material restriction or condition that prevents the NMCT from freely and effectively utilizing the gifts or the income derived there from, in furtherance of the NMCT's charitable purposes.

F. Powers of Board of Trustees With Respect to Gifts: If a direction by the donor, would result in a use contrary to the furtherance of the purpose and intent of the NMCT, or if the Board is advised by counsel that there is a substantial risk that the application of the funds, as designated by the donor, would result in a use contrary to the furtherance of the purpose and intent of the NMCT, then subject to these Bylaws, the direction given by the donor shall not be followed and shall be varied by the Board so far as necessary to avoid a contrary result.

## VII

### GRANTMAKING

The NMCT will make grants in accordance with its Grant Policy and Procedures as approved by the Board. The NMCT's spending policy which determines distribution of funds for grantmaking will be set by the Investment Committee in the Investment Policies and Procedures as approved by the Board.

## VIII

### WAIVER OF NOTICE

Whenever any notice is required to be given to any Trustee, a waiver thereof in writing signed by the person entitled to the notice is equivalent to the giving of the notice. The attendance of a Trustee in person at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

IX

MONETARY MATTERS

A. Funds and Borrowing: The depository for corporate funds, the persons entitled to draw against these funds, the persons entitled to borrow on behalf of the NMCT, and the manner of accomplishing these matters will be determined by the Board.

B. Compensation and Pecuniary Benefit: No Trustee or Officer other than the President/CEO will receive, directly or indirectly, any income, profit, compensation or pecuniary benefit from the NMCT, except that the NMCT may reimburse them from NMCT funds upon proper documentation for expenses incurred on behalf of the NMCT and may reasonably compensate them for services rendered in furtherance of the NMCT's purposes.

C. Provision Against Sharing Earnings: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes described in section 501(c)(3). No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

D. Dissolution: Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

X

INDEMNITY

A Right to Indemnification: Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "Proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Trustee or Officer of the NMCT or while a Trustee of the NMCT is or was serving at the request of the NMCT as a director, officer, partner, trustee, employee or agent of another community foundation or of a partnership, joint venture, trust or other incorporated or unincorporated enterprise, including service with respect to employee benefit plans or trusts, whether the basis of such proceeding is alleged action or inaction in an official capacity as a Trustee, Officer, director, partner, trustee, employee or agent or in any other capacity while serving as a Trustee, Officer, director, partner, trustee, employee or agent shall be indemnified and held harmless by NMCT to the fullest extent authorized by the New Mexico Nonprofit Corporation Act (the "Act") as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the NMCT to provide broader indemnification rights than said law permitted the NMCT to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be Trustee or Officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in this Article, the NMCT shall indemnify any such person seeking indemnification in connection with a proceeding (or a part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article shall be a contract right and shall include the right to be paid by the NMCT the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Act requires, the payment of such expenses incurred by a Trustee or Officer in his or her capacity as a Trustee or Officer of the NMCT (and not in any other capacity in which service was or is rendered by such person while a Trustee or Officer, including, without limitation, service to employee benefit plans or trusts) in advance of the final disposition of a proceeding, shall be made only upon delivery to the NMCT of an undertaking, by or on behalf of such Trustee or Officer, to repay all amounts so advanced if it shall ultimately be determined that such Trustee or Officer is not entitled to be indemnified under this Article or otherwise. The NMCT may, by action of its Board, provide

indemnification and advance expenses to employees and agents of the NMCT and others permitted to be indemnified by the Act with the same scope and effect as the foregoing indemnification and advancement of expenses of Trustees and Officers.

B. Right of Indemnitee to Bring Suit: If a valid claim pursuant to this Article is not paid in full by the NMCT within ninety (90) days after a written claim has been received by the NMCT, the claimant may at any time thereafter bring suit against the NMCT to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the NMCT) that the claimant has not met the standards of conduct which make it permissible under the Act for the NMCT to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the NMCT. Neither the failure of the NMCT (including its Board or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Act, nor an actual determination by the NMCT (including its Board or independent legal counsel) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

C. Non-Exclusivity: The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the NMCT's Articles of Incorporation, Bylaws, agreement, vote of disinterested trustees or otherwise.

D. Insurance: The NMCT may maintain insurance, at its expense, to protect itself and any Trustee, Officer, director, partner, trustee, employee or agent of the NMCT or another corporation, partnership, joint venture, trust or other incorporated or unincorporated enterprise (including an employee benefit plan or trust) against any such expense, liability or loss, whether or not the NMCT would have the power to indemnify such person against such expense, liability or loss under the Act.

XI

INTERESTED PARTIES

No transaction of the NMCT will be affected because a Trustee or Officer of the NMCT is interested in the transaction, unless the transaction is in violation of the proscriptions in the Articles of Incorporation and these Bylaws against inurement of monetary benefit. Such interested parties will be counted for quorum purposes however may not vote when the NMCT considers the transaction. Such interested parties will not be liable to the NMCT for the party's profits, or the NMCT's losses, from the transaction.

XII

DIVERSITY, EQUITY AND INCLUSION

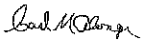
NMCT and its Trustees are committed to incorporating the values of diversity, equity, and inclusions ("DEI") in the governance and operations of the NMCT. These values shall be codified in a DEI policy adopted by the Board.

XIII

AMENDMENTS

These Bylaws may be altered, amended or repealed by the majority vote of the Board.

We certify the foregoing to be a true copy of the Bylaws duly adopted by the NMCT to be effective as of January 1, 2022.

DocuSigned by:  
  
64B69B887467469...  
CHAIR

  
SECRETARY