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MEMO

To: ACF Board of Trustees
From: Anne Sapon, Chair, Governance Committee
Date: December 9, 2024
Re: Sussman-Miller Educational Assistance Fund (“SMEAF”)

As a reminder, SMEAF is a scholarship endowment (the “Fund”) established in 1994 through the estates of Shirley Sussman Spiewak and her husband. The initial gift to establish the Fund was \$1,000,000 and since inception, \$46,429 has been added to the Fund. The Fund has distributed \$1.2M in scholarships since inception and currently has a balance of nearly \$1.4M

Throughout her life, Shirley was involved with numerous educational and charitable organizations. She and her husband were passionate advocates of education, believing it to be “the one possession that is permanent.” The Fund provides financial assistance to address the “gap” in financial aid packages for both students graduating from high school and those continuing their higher education. The establishing document also included a provision for Shirley’s daughter, Ina Miller, to be a part of the scholarship committee that would be established by Albuquerque Community Foundation (“ACF”)

In December of 2023, ACF Board of Trustees (“BOT”) denied a request from Ina to move the SMEAF fund to the Santa Fe Community Foundation (“SFCF”) where she had been depositing new funding since ACF’s enforcement of IRS regulations, National Standards, and best practices. Ina stated the fund at SFCF focuses on students in rural communities and she wanted to provide more scholarships to students in rural communities. The BOT agreed with recommendations of Staff and Governance Committee that since there is a history of granting SMEAF scholarships outside of Albuquerque, including rural communities, there was no sound reasoning to move the Fund.

Ina passed away on September 12, 2024. On September 17, 2024, BOT Trustee and Chair, José Viramontes and President & CEO, Randy Royster, received an email from attorney Andras Kosaras, Washington, D.C., on behalf of himself, a long-term friend of Ina, and Jan Randall, a long-term friend of Ina and member of the SMEAF scholarship committee. The email re-stated the request to move the Fund to SFCF, and attached a letter, allegedly penned by Ina less than two days before her death, requesting the same.

Staff contacted the Council of Foundations’ (“COF”) legal team for advice and were informed the Fund agreement fails to provide **any** legal right for Ina to direct the work of the Fund, nor to request the movement of the Fund. The COF legal team stated the ongoing management of the Fund and legal control has always, and continues to lie, within the control of ACF.



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Staff presented a memo to ACF's Governance Committee (the Committee) advising the transfer of the Fund due to potential ongoing negative "chatter" within the community about Ina's dissatisfaction with ACF and that without the removal of certain members from the SMEAF scholarship committee, the work of the scholarship committee would remain contentious – noting that if certain members were moved from the scholarship committee, it could potentially fuel the negative chatter.

In discussion with Staff about their advisement, members of the Committee noted it is likely that whether ACF transfers the Fund or not, there may continue to be negative chatter, but over a short period of time, especially considering Ina's passing, is likely to cease. Staff stated if the Committee is not concerned about ongoing negative chatter and is comfortable with Staff removing contentious members of the scholarship committee (which legally is within the full legal right of Staff), Staff would be comfortable in continuing to keep the Fund at ACF.

After additional discussion by the Governance Committee, it was determined to deny the original advisement by Staff and thereby ensure the Fund remains at ACF.

As a final note, within a few days after the action of the Committee, ACF received notice from a financial advisor to Ina, indicating a distribution from Ina's estate would be coming to ACF to be included into SMEAF.