ALBUQUERQUE COMMUNITY FOUNDATION
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MEMO

To: ACF Board of Trustees
From: Marisa Magallanez, President & CEO
Date: August 12, 2026
Re: Albuquerque Community Foundation and New Mexico Community Trust Memorandum of Understanding Proposed Revisions

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Based on recommendations from the Albuquerque Community Foundation ("ACF") Board of Trustees and the New Mexico Community Trust ("NMCT") Board of Trustees, staff are proposing revisions to the Memorandum of Understanding ("MOU") between NMCT and ACF. The primary purpose of these proposed revisions are to simplify and clarify the reimbursement section of the MOU which outlines the reimbursement amount NMCT is to pay ACF for the administrative services provided for NMCT by ACF. These revisions propose a flat fee as opposed to a reimbursement of costs as was previously outlined in the MOU. Staff are proposing that the Boards of both organizations approve the annual flat fee as part of their approval of the annual budget for their respective organizations. Additional revisions to the MOU reflect the President & CEO for NMCT and the new Board Chairs for both organizations.

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 begin on the Effective Date and continue until terminated in accordance with the provisions set forth in Section 9 (the "Term").

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) Investment Management Services. ACF employees shall provide NMCT with investment management services in accordance with the terms of an investment management agreement substantially in the form attached hereto as Exhibit A ("Investment Management 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 Investment Management Fee.

(a) Reimbursement Amount. Except as otherwise provided in this Section with respect to investment management services, the reimbursement amount for the Services shall be based on a flat fee approved annually by the ACF Board of Trustees and NMCT Board of Trustees. This flat fee will be calculated based on (i) an annual projection of 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)~~. The parties agree that the fee may not represent the true cost of all Services rendered by ACF and ACF may periodically review timesheets, records, and other information necessary to determine any adjustment in fee. All changes must be approved by the ACF Board of Trustees and NMCT Board of Trustees.

(b) Investment Management Fee. ACF shall charge NMCT a fee for the investment management services ACF provides to NMCT in accordance with the terms of the Investment Management Agreement.

(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. 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.

8. 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.

9. 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.

10. 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, CFAO 624 Tijeras Avenue NW Albuquerque, NM 87102 nick@abqcf.org	Board Chair 624 Tijeras Avenue NW Albuquerque, NM 87102
NMCT:	~~R. Randall Royster~~Marisa Magallanez, President & CEO 624 Tijeras Avenue NW Albuquerque, NM 87102 ~~randy~~marisa@nmctrust.org	Board Chair 624 Tijeras Avenue NW Albuquerque, NM 87102

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

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

22. 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.

23. 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

By: ______________________________

Debbie Harms~~Beverly Bendicksen~~, Board Chair

NEW MEXICO COMMUNITY TRUST,
a New Mexico nonprofit corporation

By: ______________________________

~~Carl Alongi~~Brian Colón, 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~~ projection rates ~~shown on Schedule B~~approved by the ACF Board of Trustees and NMCT Board of Trustees 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