



**UNIVERSITY OF NEW MEXICO  
RETIREE WELFARE BENEFIT TRUST**



## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| ARTICLE I. Creation and Purposes of the Trust .....                | 1           |
| 1.1 Creation of the Trust .....                                    | 1           |
| 1.2 Trustee .....  | 2           |
| ARTICLE II. Contributions .....                                    | 2           |
| 2.1 Trust Corpus .....   | 2           |
| 2.2 Establishment of Trust .....                                   | 2           |
| 2.3 Compliance with Laws .....                                     | 2           |
| ARTICLE III. Payments From Trust Fund.....                         | 3           |
| 3.1 Administration Committee and VEBA Investment Committee.....    | 3           |
| 3.2 Payments Directed by VEBA Benefits Committee.....              | 3           |
| 3.3 Impossibility of Diversion .....                               | 3           |
| ARTICLE IV. Investments.....                                       | 3           |
| 4.1 General.....   | 3           |
| 4.2 Establishment of Funding Policy and Investment Guidelines..... | 4           |
| 4.3 Adherence to Funding Policy and Investment Guidelines.....     | 4           |
| ARTICLE V. Powers of Trustee.....                                  | 5           |
| 5.1 Powers.....  | 5           |
| 5.2 Fees and Expenses.....   | 6           |
| ARTICLE VI. Trustee's Duties.....                                  | 7           |
| 6.1 General.....   | 7           |
| 6.2 Consultation.....  | 7           |
| 6.3 Accounting.....  | 7           |
| 6.4 Statements.....  | 7           |



|   |   |    |
|---|---|----|
| 6.5   | Valuation.....                                      | 8  |
| 6.6   | Allocation and Delegation of Responsibilities. .... | 8  |
| 6.7   | Limitation on Trustee's Liability. ....             | 8  |
| 6.8   | Force Majeure. ....                                 | 9  |
| 6.9   | Indemnification. ....                               | 9  |
| ARTICLE VII. Resignation, Removal and Succession of Trustee ..... |   | 9  |
| 7.1   | Resignation. ....                                   | 9  |
| 7.2   | Removal. ....                                       | 9  |
| 7.3   | Successor Trustee.....                              | 10 |
| 7.4   | Final Report by Trustee. ....                       | 10 |
| 7.5   | Waiver of Notice.....                               | 10 |
| ARTICLE VIII. Amendment and Termination of Agreement .....        |   | 10 |
| 8.1   | Amendment. ....                                     | 10 |
| 8.2   | Termination. ....                                   | 11 |
| ARTICLE IX. General.....  |   | 11 |
| 9.1   | Source of Funds.....                                | 11 |
| 9.2   | Limited Effect of Plan and Trust.....               | 11 |
| 9.3   | Protective Clause.....                              | 11 |
| 9.4   | Construction of Trust. ....                         | 11 |
| 9.5   | Spend Thrift Claims. ....                           | 12 |
| 9.6   | Trust Exemption. ....                               | 12 |
| 9.7   | Gender and Number.....                              | 12 |
| 9.8   | Headings. ....                                      | 12 |
| 9.9   | Authorized Persons.....                             | 12 |
| 9.10  | Plan Expenses.....                                  | 13 |



|      |                                    |    |
|------|------------------------------------|----|
| 9.11 | Execution in Counterparts. ....    | 13 |
| 9.12 | No Third Party Beneficiaries. .... | 13 |
| 9.13 | No Vested Benefits. ....           | 13 |
| 9.14 | Plan Document. ....                | 13 |
| 9.15 | Successors and Assigns. ....       | 13 |
| 9.16 | Solvency. ....                     | 13 |
| 9.17 | Delivery of Directions. ....       | 14 |



**UNIVERSITY OF NEW MEXICO**  
**RETIREE WELFARE BENEFIT TRUST**

**THIS AGREEMENT** is made, entered into, and effective as of this 1<sup>st</sup> day of July, 2013; by and between The Regents of the University of New Mexico, an institution of higher education established by the Constitution of the State of New Mexico, organized under the laws of New Mexico ("UNM") and UNM's Controller (or designee); Vice President of Human Resources (or designee); two faculty members designated by the UNM Provost; two staff members appointed by the Staff Council; one member of the Debt Advisory Committee appointed by the President of UNM; and two at-large members appointed by the President of UNM (collectively the "Trustee").

**WHEREAS**, UNM simultaneously is adopting the Retiree Welfare Benefit Plan (the "Plan") which will provide retiree welfare benefits, pursuant to the direction of the UNM Board of Regents (the "Board of Regents") during Board of Regents Meeting on April 9, 2013. Minutes of the meeting directed establishment of a trust under Internal Revenue Code Section 501(c)(g);

**WHEREAS**, the funds which will be contributed to the trust established hereunder as and when received by the Trustee, will constitute a trust fund (the "Trust Fund") to be held for the benefit of UNM employees and their eligible dependents under and in accordance with the Plan;

**WHEREAS**, UNM, pursuant to the directive of the Board of Regents, at its April 9, 2013 meeting intends that the trust hereby established, when taken together with the Plan, shall constitute a "*voluntary employees beneficiary association*" or "*VEBA*" under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code"); and

**WHEREAS**, UNM, pursuant to the directive of the Board of Regents, desires the Trustee to hold and administer the Trust Fund, and the Trustee is willing to hold and administer such Trust Fund, pursuant to the terms of this Agreement, and the laws of the State of New Mexico.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein, UNM and the Trustee agree as follows:

**ARTICLE I.**  
**Creation and Purposes of the Trust**

**1.1 Creation of the Trust.**

The name of the trust established hereunder shall be the University of New Mexico Retiree Welfare Benefit Trust.



## **1.2 Trustee.**

The Trustee shall consist of the following individuals:

- Controller or Designee
- Vice President of Human Resources or Designee
- Two Faculty Appointees (appointed by the Provost)
- Two Staff Appointees (appointed by Staff Council)
- Member of the Debt Investment Advisory Committee,  
(DIAC, ex officio, appointed by the President)
- Two Presidential Appointees

Further, the Trustee may appoint a subcommittee to work with a financial manager or engage a consultant to provide investment advice.

## **ARTICLE II. Contributions**

### **2.1 Trust Corpus.**

Simultaneously with the execution and delivery of this Agreement, UNM shall deposit in trust with the Trustee One Thousand Dollars (\$1,000). Such deposit and such other funds that shall from time to time be deposited with the Trustee under the terms hereof, as adjusted to reflect earnings and losses, shall be held by the Trustee in trust.

### **2.2 Establishment of Trust.**

All contributions received by the Trustee, together with the income therefrom and any other increment thereon shall be held, invested, reinvested, and administered by the Trustee pursuant to the terms of this Agreement without distinction between principal and income. In performing the foregoing, the Trustee shall be subject to the direction of UNM and the VEBA Investments Committee as set forth in this Agreement. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan but shall be responsible only for property received by it pursuant to this Agreement.

### **2.3 Compliance with Laws.**

The Plan, this Agreement and the Trust Fund thereunder are intended to meet the requirements of Sections 501(a) and 501(c)(9) of the Code, and the laws of the State of New Mexico.



### **ARTICLE III. Payments From Trust Fund**

#### **3.1 Administration Committee and VEBA Investment Committee.**

UNM represents that, according to the Plan document, the VEBA Benefit Committee administers the Plan is the Plan's administrator, with the authority, among other actions, to construe the terms of the Plan, establish contribution rates, and determine eligibility for benefits (including eligibility for participation and distribution, as well as the timing, amount and form thereof). The President of UNM shall also appoint a VEBA Investment Committee to provide guidance to the Trustee. The VEBA Investment Committee

#### **3.2 Payments Directed by VEBA Benefits Committee.**

The Trustee shall from time to time at the direction of the VEBA Benefits Committee make payments out of the Trust Fund to the persons or entities to whom such monies are to be paid in such amounts and for such purposes as may be specified in the directions of the VEBA Benefits Committee. To the extent permitted by law, the Trustee shall be under no liability for any payment made pursuant to the direction of the VEBA Benefit Committee. Any direction of the VEBA Benefits Committee shall constitute a certification that (i) the distribution or payment so directed is one which the VEBA Benefits Committee is authorized to direct and (ii) the direction is consistent with the Plan and with applicable law.

#### **3.3 Impossibility of Diversion.**

The Trust Fund will be held separate and apart from the assets of UNM; except as permitted by law, will never inure to the benefit of (or revert to) UNM and will never inure to the benefit of any private shareholder or individual, other than through the payment of benefits permitted by Treasury Regulations Section 1.501(c)(9)-4; and will be held for the exclusive purposes of providing benefits to Plan participants and beneficiaries and defraying reasonable expenses of administering the Plan and the Trust, as directed by the VEBA Investment Committee. It shall be impossible, whether by amending or terminating this Agreement or otherwise, at any time before the satisfaction of all liabilities to Plan participants and beneficiaries for any part of the Trust Fund to be used for, or diverted to, other purposes.

### **ARTICLE IV. Investments**

#### **4.1 General.**

The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, real or personal, tangible or intangible, as the Trustee shall deem advisable, including but not limited to insurance policies, stocks, common or preferred, trust and participation certificates, interest in investment companies whether so-called "open-end mutual funds" or "closed-end mutual funds," leaseholds, fee titles, bonds, or notes and mortgages, and other evidences of indebtedness or



ownership, common or collective funds maintained by a bank or similar institution, deposits of a bank or similar financial institution provided such deposits bear a reasonable rate of interest, irrespective of whether such securities or such property shall be of the character authorized by any state law from time to time for trust investments, including but not limited to any of the foregoing which is administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Trustee or any of the Trustee's affiliates; provided, however, that investments shall be so diversified as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so in the sole judgment of the Trustee.

#### **4.2 Establishment of Funding Policy and Investment Guidelines.**

The VEBA Benefit Committee shall, pursuant to the Plan, establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time (the "Funding Policy"). As part of the Funding Policy, the VEBA Investment Committee shall from time to time (a) perform a periodic written analysis of the Plan's cash-flow history, liquidity needs, short-term financial needs, long-term financial needs, expected levels and timing of contributions and distributions, and other significant information which would affect the exercise of investment discretion, including but not limited to the anticipated liquidity required for making benefit distributions; and (b) deliver the Funding Policy to the Trustee, including directing the Trustee to exercise its investment discretion so as to provide sufficient cash assets in an amount determined by the VEBA Benefit Committee to be necessary to meet the liquidity requirements for the administration of the Plan.

The VEBA Investment Committee shall establish the written investment objectives, policies, and restrictions for Trust Fund investments, including but not limited to proxy-voting guidelines (the "Investment Guidelines"). The VEBA Investment Committee shall from time to time deliver the Investment Guidelines to the Trustee.

UNM hereby represents that the Funding Policy, the Investment Guidelines, and the classes of permissible investments under this Agreement are the only investment restrictions imposed by UNM upon the Trust Fund.

#### **4.3 Adherence to Funding Policy and Investment Guidelines.**

UNM hereby reserves to the VEBA Investment Committee the right to invest and reinvest the Trust Fund and to direct the Trustee accordingly. Absent such direction, the Trustee shall invest and reinvest the Trust Fund in its sole discretion, subject to the Funding Policy and the Investment Guidelines. Subject to the limitations set forth in this paragraph, the Trustee will be what is commonly known as a discretionary trustee.





ARTICLE V.  
Powers of Trustee

5.1 Powers.

The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Agreement, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

- (a) To purchase, or subscribe for, any securities or other property and to retain the same in trust;
- (b) To sell, exchange, convey, transfer, or otherwise dispose of any securities or other property held by the Trustee;
- (c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund; provided that, the Trustee shall pass-through the foregoing to the VEBA Benefit Committee with respect to any security in which the Trustee has an interest and shall comply with UNM Policy 3720 and 7610, Conflicts of Interest, and any successors thereto.
- (d) To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (e) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the trust created hereby, without liability for interest thereon;
- (f) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (g) To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;
- (h) To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest in a Trustee's bank, in the event that the Trustee is a bank, savings and loan association or other similar regulated financial institution;



- (i) To invest in Treasury Bills and other forms of United States government obligations;
- (j) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations and the Trustee to the extent permitted under applicable law and exemptions thereunder;
- (k) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund, and to carry out the purposes of this Trust;
- (l) To hold un-invested reasonable amounts of cash to facilitate disbursements or for other operational reasons, and to deposit the same in an interest-bearing or noninterest-bearing deposit account with the Trustee, notwithstanding the Trustee's receipt of income on such float;
- (m) To appoint a sub-custodian over Trust Fund assets;
- (n) To hire, at Trustee's expense, accountants, actuaries, administrators, appraisers, attorneys, auditors, banks, brokers, consultants, custodians, depositories, financial consultants, insurance brokers, investment advisors, investment managers, lenders, securities brokers, or other service providers to assist it in exercising any of its rights or performing any of its duties hereunder, including any of the foregoing that is affiliated with the Trustee, provided such engagement is authorized by law and is based upon reasonable terms, and to rely upon any advice, opinions, records, statements, or other information provided by such service providers, and further provides that such engagement complies with UNM Policy 3720, Conflicts of Interest, and any successor thereto.
- (o) To pay from the Trust Fund any taxes that may be levied or assessed upon the Trust Fund;
- (p) To have and to exercise such other powers as may be advisable for the administration of the Trust Fund.

## **5.2 Fees and Expenses.**

The Trustee shall be entitled to receive compensation for providing services hereunder. A schedule of that compensation is attached as **Exhibit A (Benefit Plan Fee Disclosure and Authorization)** hereto. In addition, the Trustee shall be reimbursed for any reasonable expenses, fees, costs, and other charges incurred by it or payable by it on account or providing services hereunder (including but not limited to amounts payable to service providers hired pursuant to Section 5.1(14)). Such compensation and expenses shall be charged against the Trust Fund or against investments held therein. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof shall be paid by the Trustee from the Trust Fund.



## ARTICLE VI. Trustee's Duties

### 6.1 General.

The Trustee shall discharge its duties under this Agreement solely in the interest of the employees covered under the Plan and their dependents and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Agreement insofar as they are consistent with the provisions of the laws of the State of New Mexico, as this Agreement and the laws of the State of New Mexico may be from time to time amended; but the duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Agreement notwithstanding any reference herein to the Plan, or the provisions thereof, it being hereby expressly agreed that the Trustee is not a party to the Plan.

### 6.2 Consultation.

The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of competent counsel. The Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Agreement, except such as may be required by a law which prohibits the waiver thereof.

### 6.3 Accounting.

The Trustee will maintain proper books of account and complete records of assets and transactions in the Trust Fund, including increases or decreases in the value of Trust assets due to contributions to the Trust, distributions from the Trust, investment experience on Trust assets, and expenses and fees charged to the Trust.

### 6.4 Statements.

The Trustee will furnish the VEBA Investment Committee with (i) a monthly account statement within thirty (30) calendar days after the end of each calendar month and (ii) a final account statement within thirty (30) calendar days after Trustee's resignation or removal hereunder. Such account statements will reflect asset transactions in the Trust Fund during the reporting period and ending asset holdings in the Trust. For any asset not in the control of the Trustee, the Trustee has the right to exclude the asset from such account statements, include the asset in such account statements with or without a notation about control, require UNM to enter into a separate written agreement clarifying rights and duties regarding the asset, or take other steps the Trustee deems appropriate, and UNM hereby acknowledges that the inclusion of the asset in any such account statement does not impose or suggest any duties for the Trustee with respect to the asset.



## 6.5 Valuation.

For purposes of reporting the value of an asset on the account statements described above, the Trustee will rely upon fair market value as stated in sources the Trustee deems reliable. Where such fair market value is unavailable, the VEBA Investment Committee will direct the Trustee as to the value of an asset, provided the Trust Fund did not acquire the asset through the Trustee's exercise of investment authority. Any such VEBA Investment Committee direction will (i) be deemed to include the VEBA Investment Committee's representation that the VEBA Investment Committee understands such investment's underlying investments and investment strategy and that the valuation methodology is consistent with the investment's written valuation provisions and reflects fair value and (ii) identify, and explain the qualifications of, the person or entity that performed valuation. If the VEBA Investment Committee fails to provide such direction, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers, or other professionals, the expense of which will be an expense of the Trust. A valuation made by the Trustee in good faith will be binding and conclusive upon all persons interested, or becoming interested, in the Plan or the Trust. UNM hereby acknowledges that the reporting of values on an account statement is neither (i) a recommendation as to the advisability of buying, holding, or selling any asset nor (ii) a substitute for investigation by a Trust investment fiduciary of an asset's value in connection with a decision to buy, hold, or sell (or for such investment fiduciary's obtaining and ensuring the reliability of a third-party appraisal with respect to such a decision). The VEBA Investment Committee will be responsible for reviewing the account statements described above.

## 6.6 Allocation and Delegation of Responsibilities.

If there is more than one Trustee, then the responsibilities of each Trustee may be specified by UNM and accepted in writing by each Trustee. If no such delegation is made by UNM, then the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify UNM and the Administrator in writing of such action and specify the responsibilities of each Trustee. Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

## 6.7 Limitation on Trustee's Liability.

The duties of the Trustee will be strictly limited to those set forth in this Agreement. The Trustee shall not be responsible in any respect for administering the Plan, nor shall the Trustee be responsible for the adequacy of contributions to the Trust Fund to meet or discharge any payments or liabilities under the Plan. The Trustee shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the VEBA Benefit Committee. Without limiting the generality of the foregoing, the Trustee shall have no duty to:

- (a) Prescribe or maintain a Plan document or forms (including but not limited to forms for electing participation, distribution, withdrawal and for providing notices to Plan participants and beneficiaries);



(b) Request or obtain a ruling or other guidance from the Internal Revenue Service or any other governmental authority as to (or otherwise determine or monitor) the tax consequences of the form and operation of the Plan, Plan document, Trust Fund, and this Agreement;

(c) Construe the terms of the Plan, determine eligibility for Plan benefits (including eligibility for participation, vesting, and distribution, as well as the timing, amount, and form thereof), resolve benefit claims or claim appeals, maintain participant-level records, determine whether any expense is a proper Plan expense, or perform any functions of a plan administrator;

(d) Determine, monitor, and collect Plan contributions; rather, the Trustee will be subject to the VEBA Benefit Committee's direction with regard to such matters; or monitor compliance with any applicable funding requirements under applicable law;

(e) Give notices or make filings required by applicable law regarding the Plan or Trust, including calculating, withholding, disclosing, reporting, or remitting to the appropriate taxing authorities, Plan participants, or Plan beneficiaries any federal, state, or local taxes that may be required to be calculated, withheld, disclosed, reported, or remitted with respect to the administration of the Plan (such as paying Plan benefits) or the Trust, except to the extent required by law to be performed only by the Plan's trustee or as otherwise expressly provided under this Agreement;

(f) Monitor service providers hired by UNM or hired by the VEBA Benefit Committee; or

(g) Make a distribution to the extent that Trust assets, when reduced by taxes applicable to such a distribution, when further reduced by expenses payable by the Trust, are less than the amount of the payment.

**6.8 Force Majeure.** The Trustee will not be responsible for any delay or failure in performing its obligations under this Agreement caused by circumstances beyond the Trustee's reasonable control.

**6.9 Indemnification.** UNM represents that Article IX, Section 14 of the New Mexico Constitution prohibits UNM from agreeing to hold harmless or indemnify the Trustee hereunder.

## **ARTICLE VII.**

### **Resignation, Removal and Succession of Trustee**

#### **7.1 Resignation.**

The Trustee may resign at any time by giving thirty (30) days notice in writing to the VEBA Investment Committee.

#### **7.2 Removal.**

The VEBA Investment Committee may remove the Trustee at any time upon thirty (30) days notice in writing to the Trustee with the prior approval of the President of UNM.



### **7.3 Successor Trustee.**

Upon the resignation or removal of the Trustee, the VEBA Investment Committee shall appoint a successor trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder. If the VEBA Investment Committee fails to deliver a successor trustee's written acceptance of trusteeship on or before the effective date of resignation or removal, the Trustee may immediately petition a court for appointment of a successor, and the cost of such petition shall be borne by the Trust Fund. Upon a successor's acceptance of trusteeship (through judicial declaration or otherwise, the Trustee shall assign, transfer, and pay over to such successor trustee the funds and properties then constituting the Trust Fund. The Trustee is authorized, however, to reserve such reasonable sum of money as it may deem advisable for payment of its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee.

### **7.4 Final Report by Trustee.**

Within sixty (60) days after the resignation or removal of the Trustee, the Trustee may furnish to the VEBA Investment Committee a written statement of account with respect to the portion of the year for which the Trustee served. The VEBA Investment Committee, forthwith upon his receipt of such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee of his approval or disapproval thereof. Failure by the VEBA Investment Committee to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed approval thereof. The approval by the VEBA Investment Committee of the statement of account shall serve to release and discharge the Trustee from any liability or accountability to UNM as respects the propriety of the Trustee's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the VEBA Investment Committee shall file written objections with the Trustee within the thirty (30) day time period prescribed.

### **7.5 Waiver of Notice.**

In the event of any resignation or removal of the Trustee, the Trustee and the VEBA Investment Committee may in writing waive any notice of resignation or removal as may be provided hereunder.

## **ARTICLE VIII.**

### **Amendment and Termination of Agreement**

#### **8.1 Amendment.**

Any or all of the provisions of this Agreement may be amended at any time and from time to time, in whole or in part, by an instrument in writing signed by the President of UNM and the Trustee. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the employees and their spouses and dependents; no such



amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of UNM.

## **8.2 Termination.**

This Agreement may be terminated at any time by the President of UNM and upon such termination, or upon the dissolution or liquidation of UNM, the Trust Fund shall be distributed by the Trustee as and when directed by the VEBA Investment Committee or by UNM, in accordance with the provisions of Article III hereof and the terms of the Plan and Code. UNM hereby represents that such distributions shall be contributions to retiree health and welfare coverage for Plan participants pursuant to the provisions of NMSA 10-7C-4(H)(3)(C), 10-7C-9(F) and New Mexico Administration Code regulation 2.81.10.8 or any subsequent statute or regulation of similar import. In no event shall any part of the corpus or income of the Trust Fund be paid to or for the benefit of UNM.

## **ARTICLE IX. General**

### **9.1 Source of Funds.**

This Trust shall constitute the sole source of funds which may be used to pay the welfare benefits provided under the Plan, and UNM shall not be liable in any way or in any manner for any such benefits or payments beyond those monies which have been contributed to this Trust.

### **9.2 Limited Effect of Plan and Trust.**

Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any welfare benefits, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, UNM, or any officer or employee thereof, except as may otherwise be provided in the Plan or in the Trust. Under no circumstances shall the term of employment of any employee be modified or in any way affected by the Plan or this Trust.

### **9.3 Protective Clause.**

Neither UNM nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

### **9.4 Construction of Trust.**

This document constitutes the entire trust and may be amended only in writing as provided herein. This Trust shall be construed and enforced according to the laws of New Mexico, except where pre-empted by federal law. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.



#### **9.5 Spend Thrift Claims.**

None of the benefits under the Plan are subject to the claims of creditors of a Plan participant, and are not subject to attachment, garnishment, or any other legal process. No Plan participant may assign, sell, borrow upon or otherwise encumber any of his beneficial interest in the Trust nor shall such benefits be in any manner liable for or subject to the deeds, contracts, liabilities, engagements or torts of any Plan participant.

#### **9.6 Trust Exemption.**

The VEBA Benefit Committee shall submit this Agreement and Plan to the Internal Revenue Service for a determination of their status as a qualified voluntary employee's beneficiary association described in Section 501(c)(9) of the Code. The VEBA Benefit Committee shall also make any similar submission required to establish their status as exempt from state-income tax. The Trustee shall sign such submissions, if needed, as directed by the VEBA Benefit Committee. Until notified by the VEBA Benefit Committee to the contrary, the Trustee may assume such federal and state tax-exempt status. The Trustee shall have no duty to request or obtain a ruling from any governmental authority as to (or otherwise determine or monitor) such status.

The VEBA Benefit Committee hereby represents that (i) all benefit distributions from the Trust Fund will directly or indirectly reimburse Plan participants and beneficiaries for expenses incurred for the medical or dental care of Plan participants, beneficiaries, their spouses, and their dependents, under Code Section 105(b) or for basic group term life insurance coverage under Code Section 79; and (ii) no distribution from the Trust Fund will be includible in the gross income of any Plan participant or beneficiary under Code Section 61 or be wages for Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), or income-tax withholding purposes.

#### **9.7 Gender and Number.**

Wherever any words are used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

#### **9.8 Headings.**

The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### **9.9 Authorized Persons.**

The Chair of the VEBA Investment Committee shall identify each member of the VEBA Benefits Committee, by giving the Trustee (i) a certificate of incumbency indicating which UNM officers holding those offices; and (ii) the specimen signature of such employees. UNM will also identify each employee of a third-party agent who is authorized to act on UNM's behalf hereunder,





by giving the Trustee an authorization letter setting forth the name of such agent and the names and specimen signatures of such employees. UNM will similarly identify each UNM employee and third-party agent employee who is authorized to act on behalf of the VEBA Investment Committee.

**9.10 Plan Expenses.**

The VEBA Investment Committee may direct the Trustee from time to time to charge an expense, or type of expense, against the Trust. The Chair of the VEBA Investment Committee hereby represents that any expense, or type of expense, so directed to be charged is a permissible Plan expense (and is not a settlor expense).

**9.11 Execution in Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, without production of the others, will be deemed to be an original.

**9.12 No Third Party Beneficiaries.**

This Agreement will not be deemed to create in any third party any rights or responsibilities with respect to the parties.

**9.13 No Vested Benefits.**

Neither the creation nor the operation of the Trust will cause the vesting of a Plan participant's or beneficiary's right to Plan benefits.

**9.14 Plan Document.**

The Chair of the VEBA Investment Committee hereby represents that (i) it has delivered the Plan document as in effect on the date first written above to the Trustee and will provide the Trustee with any subsequent amendment thereof and (ii) the Plan document is not, and will not be, inconsistent with this Agreement (including, but not limited to, with regard to the identity of any fiduciary). In the event of a conflict between the Plan document and this Agreement, this Agreement will prevail with respect to the rights, powers, and duties of the Trustee.

**9.15 Successors and Assigns.**

This Agreement will be binding upon and inure to the benefit of UNM, the Trustee, and their respective successors and assigns.

**9.16 Solvency.**

UNM represents that UNM is not subject to any pending bankruptcy or insolvency proceeding, and UNM will notify the Trustee promptly of any such proceeding.



9.17 Delivery of Directions.

Any direction or other communication provided for in this Agreement will be given in writing and, unless the recipient has timely delivered a superseding address hereunder, addressed as indicated below. The Trustee will not be charged with knowledge of an emailed direction to the Trustee's detriment if the email cannot be shown to have been sent to the Trustee return-receipt requested.

If to the Trustee:

VEBA Board of Trustees  
c/o Office of University Counsel  
Scholes Hall, Room 208  
MSC05 3440  
Albuquerque, NM 87131-0001  
universitycounsel@salud.unm.edu

If to UNM or the VEBA Investment Committee:

University of New Mexico  
c/o Vice President  
Human Resources Division  
MSC 01 1224  
1700 Lomas Blvd., N.E., Room 3700  
Albuquerque, NM 87131-0001  
(505) 277-5804  
jwashington@unm.edu

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Agreement on the day and year first above written.

REGENTS OF THE UNIVERSITY OF NEW MEXICO

By: Robert G. Frank  
Name: Robert G. Frank

Its: President

TRUSTEE

By: Liz Metzger  
Name: Liz Metzger Elizabeth Metzger

Its: University Controller