

6/25/07
MEMORANDUM OF AGREEMENT
BETWEEN THE REGENTS OF THE UNIVERSITY OF NEW MEXICO
AND
THE HARWOOD ALLIANCE

This Memorandum of Agreement is entered into this ____ day of _____, 2007, by and between the Regents of the University of New Mexico (the “Regents” or “University”), a public institution of higher education of the State of New Mexico, on behalf of the Harwood Foundation of the University of New Mexico (“Harwood Museum”) and the Harwood Alliance, a New Mexico non-profit corporation established to benefit the the Harwood Museum.

RECITALS

WHEREAS, the Museum is owned by and subject to the full authority of the Regents, a body corporate, and by action taken on _____, 2007, at a duly constituted meeting, the Regents have delegated authority for the governance, management and operations of the Museum to the Governing Board of the Harwood Foundation of the University of New Mexico (“Harwood Board”).

Whereas, the Harwood Alliance is organized as a New Mexico non-profit corporation to benefit the Harwood Museum, and has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and agrees that it will use all funds raised, contributed or otherwise received by the

Harwood Alliance shall be used exclusively to benefit the Harwood Museum and no other organization, profit or nonprofit;

Whereas, within the meaning of NMSA 1978, §6-5A-1 Requirements for Recovering Funds from Certain Organizations, the principal and authorized purpose of the Harwood Alliance is to complement, contribute to and support the Harwood Museum, Regents policy requires the University to enter into a contract with the Harwood Alliance that meets specific requirements as a condition to accepting the transfer of property and funds between the Alliance and the University.

Now, therefore, the University and the Harwood Alliance agree as follows:

1.0 DEVELOPMENT PROGRAMS OF THE HARWOOD ALLIANCE

1.1 The purpose of the Harwood Alliance is to encourage public support of and to raise funds for the benefit of the Harwood Museum, through membership programs and other activities agreed upon between the Alliance and the Harwood Board.

1.2 The Harwood Board has been designated by the UNM Board of Regents to take primary responsibility for raising funds to support the general needs of the Harwood Museum and to supervise the activities of the Harwood Alliance. The Harwood Board has the obligation to report to the Regents regarding its activities, including its oversight of the Harwood Alliance.

1.3 At least annually, the Harwood Board and the Harwood Alliance will agree on fundraising goals, programs and activities that are appropriate for Harwood Alliance financial and volunteer support, and planned levels of financial contribution to be provided to the Harwood Museum.

1.4 The Regents specifically authorized the Harwood Alliance to raise funds to benefit the Harwood Museum through the solicitation of memberships as identified in the By Laws of the Harwood Alliance that provide various incentives to Alliance members, including discounts on Museum admission, gift shop purchases, and access to special shows and events. The Alliance agrees to transfer to the Museum the portion of membership dues in accord with the Alliance's annual budget, as approved, said dues to be transferred at least quarterly. No changes may be made to the current categories of membership and the accompanying discounts and benefits without the approval of the Harwood Board and The Regents

1.5 The Harwood Alliance shall not solicit or accept gifts, grants or bequests from any source in a manner or for a purpose that is contrary to law. The acceptance of any gift or donation that requires a matching obligation of the University or creates a future obligation of University resources must first be approved by the University's Development Office and the Harwood Board.

1.6 The Harwood Alliance will participate in the coordinated fundraising activities of the University.

1.7 In order to facilitate the maximum support for the Harwood Museum from private donors, the Harwood Alliance agrees to cooperate and consult with the Harwood Board concerning plans for the solicitation of funds. The Harwood Alliance agrees that it will not commence any fund-raising activity without the approval of the Director of the Harwood. Any plans by the Harwood Alliance to seek donations from potential donors identified by the University as priority donors for other University needs will be coordinated through the University's Development Office after consultation with the Harwood Board.

2.0 MANAGEMENT OF GIFTS AND DONATIONS

2.1 The Harwood Alliance shall provide the Harwood Board with an annual report which shall include a summary of all programs and activities conducted during the donor's past year, the Harwood Alliance's operating income and expenses for the fiscal year, and a listing of its officers and directors.

2.2 The Harwood Alliance will not accept in-kind permanent gifts such as works of art, real or personal property, library books or real estate, but will refer the potential donor to the Museum Director and the UNM Foundation. Nothing in this section shall

prevent the Alliance from soliciting and receiving in-kind gifts from donors in connection with such Alliance-sponsored fund-raising events in which donated items will be sold to benefit the Museum. The Alliance will not solicit or accept gifts of funds intended for the purpose of establishing a permanent endowment, but will refer all such potential endowment donations to the UNM Foundation.

2.3 The Harwood Alliance agrees to deposit all funds received in bank and investment accounts established by the Alliance. Any investments of the Harwood Alliance's funds will be made in compliance with New Mexico's Prudent Person Rule, Section 6-8-10, NMSA 1978. The Harwood Alliance shall maintain control over and be responsible for the operation and solvency of this fund and may expend such funds to support its fund-raising efforts consistent with its approved budget of the Alliance.

3.0 ORGANIZATION, FUNCTION AND BUDGET

3.1 The Harwood Alliance will operate according to its Articles of Incorporation and Bylaws, as amended from time to time and as limited by this Agreement. The Harwood Alliance agrees to organize and operate in such a manner as will retain the Harwood Alliance's legal status as a tax-exempt, non-profit organization pursuant to Section 501(c)(3) of the Internal Revenue Service Code, or any successor statute.

3.3 The Harwood Alliance may contract with persons or entities to provide services on a temporary consulting basis as necessary to fulfill its role and responsibilities, consistent with its approved budget. However, the Harwood Alliance may not contract with employees or faculty of the University of New Mexico for the provision of services except with the written authorization of the President of the University.

3.4 The Harwood Alliance agrees that it will submit its annual budget of income and expenditures to the Harwood Board for approval, which approval will not be unreasonably withheld. The Harwood Alliance agrees that its expenditures will be consistent with its annual budget as approved or any amended budget approved by the same process. In developing the Harwood Alliance's budget, the Harwood Board and Harwood Alliance shall consult about the most efficient approaches to fund-raising and shall endeavor to minimize fund-raising expenses so that donations to support the Harwood Museum are maximized.

4.0 DISTRIBUTION AND EXPENDITURE OF FUNDS

4.1 The Harwood Alliance will be responsible to advise UNM and to act in conformance with appropriate restrictions imposed by donors.

4.2 .All funds transferred from the Alliance to the Harwood Museum will be deposited in the appropriate University accounts and will be disbursed through the University general ledger system. The Harwood Alliance shall transfer membership dues and all gift

funds to the University for the benefit of the Harwood Museum less approved budgeted expenses on at least a quarterly basis.

4.3 The Harwood will not transfer any funds in the form of compensation or reimbursement to a University employee or for the purchase of goods and services for any unit of the University, including for the Harwood Museum, unless specifically approved in writing by the Harwood Board. The Harwood Alliance will not engage in any instructional, research or public service activity sponsored by or otherwise involving a University department or individual employee, except with advance written approval of the Harwood Board.

5.0 REPORTS AND ACCOUNTING

5.1 In each year that the Harwood Alliance's gross annual income exceeds One Hundred Thousand Dollars (\$100,000), it shall provide the University with the report of an annual audit performed by an independent certified public accounting firm. If required by the rules of the State Auditor, the audit must be performed by the same firm that is auditing the University for the year in question unless an exception is made by the State Auditor. In each year that the Harwood Alliance's gross annual income is One Hundred Thousand Dollars (\$100,000) or less, it shall file a statement with the Harwood Board in the form of a balance sheet showing the assets of the Harwood Alliance, its liabilities, its income, classified by general source, and its expenditures.

5.2 The Harwood Alliance is subject to review or audit by the University Internal Audit Office and agrees to provide any information regarding financial operations of the Harwood Alliance, including the working papers of any audit, to the University's internal audit staff upon written request to the President of the Harwood Alliance's Board.

6.0 UNIVERSITY COMPLIANCE WITH STATE LAW

6.1 Any funds or property transferred to the University for the Harwood Museum shall be subject to all University policies and procedures and state laws and regulations governing the disbursement and administration of public funds and public property, except to the extent of any specific donor restrictions that are acceptable to the University and do not require actions that are punishable as crimes under state law.

7.0 OPERATIONAL CONSIDERATIONS

7.1 The Board of Regents has reviewed the Harwood Alliance's Articles of Incorporation and Bylaws as of the date of this agreement and has found them acceptable. All proposed amendments to the Harwood Alliance's Articles or Bylaws thereafter shall be submitted at least forty-five (45) days prior to their proposed adoption to the UNM Board of Regents. Any alteration or variation of the terms of the Harwood Alliance's Articles of Incorporation or the Bylaws of the Harwood Alliance shall be submitted for approval of the Board of Regents before becoming effective.

7.2 The Harwood Alliance and the University agree that the Harwood Alliance shall act in an independent, separate legal capacity and not as an agent of the University and that the University shall act in an independent, separate legal capacity and not as an agent of the Harwood Alliance.

7.3 Within the limits and restrictions of the New Mexico Tort Claims Act, § 41-4-1 et seq. NMSA 1978, each party agrees to be responsible for its own negligent acts or omissions which may occur during the performance of this agreement and which result in claims by individuals or entities not parties to this agreement.

7.4 No amendment to this agreement shall be valid unless made in writing and signed by both parties. The parties concur that oral understandings or agreements and alterations or variations of the terms are not binding on either party unless incorporated herein.

All official notices required under this agreement shall be given in writing delivered to the following addresses:

To the University: Director of the Harwood Museum, 238 Ledoux
St., Taos NM 8571-6004

To the Harwood Alliance: The President of the Board of Directors of the Harwood Alliance, the address of which shall be provided to the Director of the Harwood Museum.

7.6 In the event of any dispute between the parties, they shall meet and confer in an attempt to resolve the issue.

8.0 TERMINATION

8.1 This agreement may be terminated by either party at its discretion effective upon the giving of written notice to the other at least sixty (60) days in advance. In the event the University determines to terminate this Agreement because of breach by the Harwood Alliance of its terms, the notice period may be shorter if appropriate in the circumstances as determined by the University to avoid harm to the University or the Harwood Museum. If for any reason this agreement is terminated or the Harwood Alliance is dissolved or liquidated, all accounts of the Harwood Alliance shall be transferred to the University or a successor organization(s) designated by a resolution of the Board of Regents on or before the date of termination for the benefit of the Harwood Museum. In such event, the University or other successor organization will honor to the maximum extent possible the instructions of donors to the Harwood Alliance.

9.0 APPROVAL BY THE BOARD OF REGENTS AND THE BOARD OF HARWOOD ALLIANCE

9.1 This agreement is subject to approval by the UNM Board of Regents pursuant to UNM Regents Policy Manual Section 7.17 and by the Harwood Alliance's Board of Directors.

Signed on behalf of:

THE REGENTS OF THE UNIVERSITY
OF NEW MEXICO

HARWOOD ALLIANCE

By: _____

By: _____

David Schmidly, President

_____, President

Date: _____

Date: _____