

25-2 Foundation Bylaws

- **25-2-1 Purpose**

1. Purpose. To promote the development of Eastern New Mexico-University (ENMU-Roswell), concerned citizens have incorporated a foundation and established bylaws for the operation of the entity. The bylaws for the Foundation are as follows:

AMENDED AND RESTATED BYLAWS OF EASTERN NEW MEXICO UNIVERSITY - ROSWELL FOUNDATION

ARTICLE I

Name

The name of this corporation shall be:

Eastern New Mexico University - Roswell Foundation ("Corporation").

ARTICLE II

Section 1. The principal office of the Corporation in the State of New Mexico shall be located in Roswell, New Mexico. The Corporation may have such other offices, either within or without the State of New Mexico, as the Board of Directors may designate from time to time.

ARTICLE III

Purposes

The purposes and objectives of the Corporation shall be those expressed in the Articles of Incorporation, as amended.

ARTICLE IV

Members

Section 1: The Corporation shall not have any members and it shall be a non-profit corporation which shall not afford pecuniary gain incidentally or otherwise to the directors or officers of the Corporation. The Corporation shall not issue any shares of stock.

ARTICLE V

Board of Directors

Section 1: Number, Tenure and Classes: The Corporation shall have not less than three nor more than eighteen directors and the directors shall be appointed by the Board of Directors. The President of ENMU-R shall serve in an advisory capacity as an ex-officio member of the Board of Directors. The terms for Directors of the initial board designated in the Amended and Restated Articles of Incorporation shall commence service August 1, 1999. Of the initial Board serving from and after August 1, 1999, two Directors shall each be appointed initially for a one-year term, three for a two-year term and three for a three-year term. Thereafter, the terms of all directors shall be three years. Beginning with the first annual meeting of directors after the adoption of these Bylaws and continuing thereafter, two additional directors shall be selected by the Board of Directors, to wit: (a) a member of the Branch Community College Board serving Chaves County, New Mexico and (b) a member of the board of regents of the higher educational institution with whom ENMU-R is affiliated (which is presently the Board of Regents of Eastern New Mexico University). Representatives of these two organizations shall continue to be selected as directors by the full Board of Directors. Beginning with

the first annual meeting of directors after the adoption of these amended Bylaws and Director shall serve until his successor is appointed and qualified.

Section 2: General Powers: The business and affairs of the corporation shall be managed by the Board of Directors.

Section 3: Meetings; Notice: The Board of Directors shall hold regular meetings semi-annually, with one meeting, considered the annual meeting, to be held in the second quarter (April, May or June) of each year. Unless otherwise determined by the President or Board of Directors, the meetings of the Board of Directors shall be held at the principal office of the Corporation. At each annual meeting the Board of Directors shall elect the officers of the Corporation and transact such other business as may come before the meeting. Notice of the annual and semi-annual meetings shall be given in writing or by fax to each Director not less than five days before the meeting, excluding the date of the meeting. Such notice shall be deemed to have been delivered when deposited in the United States mail with proper first class postage thereon or when sent and received by fax.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President, or any Vice President with approval of a majority of the members of the Board of Directors, on 48-hour notice given personally, by telephone or fax or 72-hour notice given by mail. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of New Mexico, as the place for holding any special meeting of the Board of Directors called by them.

Section 5. Attendance by Telephone: Members of the Board of Directors or any committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participate.

Section 6. Action by directors without a meeting. Any action required to be taken at a meeting of the directors of the Corporation, or any action which may be taken by a committee appointed by the board of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

Section 7. Waiver. Any Director may waive notice of any meeting of directors. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any matters because the meeting is not lawfully called or convened.

Section 8. Quorum; Proxy. A majority of the listed members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority is present at any meeting, the Directors present may adjourn the meeting from time to time without further notice until a quorum is obtained. Members of the Board of Directors unable to attend a legally called meeting may be represented at such meeting by proxy so designated in writing or by fax personally signed by the director granting the proxy.

Section 9. Vacancy. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of the members called for that purpose.

Section 10. Action by Directors without Meeting: Any action required to be taken at a meeting of the Board of Directors 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 of the Board of Directors.

Section 11: Executive Committee and Other Committees: The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate and appoint from among its members an executive committee consisting of not less than three Directors. The Board of Directors may, in the same manner, establish and appoint one or more other committees. The Executive Committee and any other committee or committees shall, to the extent provided in a resolution of the Board, have and may exercise such authority of the Board of Directors as is granted to it by the Board; provided, however, no committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any committee or any Director or officer of the Corporation; amending the Articles of Incorporation, restating Articles of Incorporation, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property or assets of the Corporation; authorizing the borrowing of money; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore; adopting a plan for the distribution of the assets of the Corporation; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides it shall not be amended, altered or repealed by the committee. Any action taken by a committee of the Board of Directors shall be reported to the Board of Directors at its next meeting, whether it be a regular or special meeting. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law.

ARTICLE VI

Officers

Section 1. Designation of Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer. The latter two offices may be combined. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors.

Section 2. Election; Term; Removal; Vacancy. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. Each officer shall hold office for a period of one year or until successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of the Corporation would be served thereby. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. President. The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. He or she shall, when present, preside at all meetings of the members and of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, any instrument which the Board of Directors has authorized to be executed, except in cases where the signing and executing thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed and executed; and in general shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 4. Vice-President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all of the powers of and be subject to all of the restrictions upon the President. The Vice President shall perform such other duties as may be from time to time assigned to him or her by the President or by the Board of Directors.

Section 5. Secretary. The Secretary shall: (a) keep the minutes of the meetings of the Board of Directors' in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the membership of the Board of Directors of the Corporation, together with the Post Office address and telephone number of each Director.

Section 6. Treasurer. The Treasurer shall have custody of all funds; property and securities of the Corporation subject to such regulations as may be imposed by the Board of Directors. He or she may be required to give bond for the faithful performance of his duties in such sum and with such surety as the Board of Directors may require. He or she shall account to the Board of Directors at least annually for all receipts, disbursements and property of the Corporation. He or she shall have the powers and duties usually incident to the office, subject to the direction of the Board of Directors.

ARTICLE VII

Executive Director and Staff

Section 1 The Board of Directors may select and appoint an Executive Director, who upon appointment shall perform such duties in regard to management of the day-to-day affairs of the corporation as may from time to time be assigned to him by the President or Board of Directors. The Executive Director may receive such reasonable compensation for his services as the Board of Directors may prescribe.

Section 2. A paid staff of personnel, exclusive of the Executive Director, may be selected by the Executive Director. The Executive Director shall have the primary responsibility for supervising activities of the Staff and for determining the compensation of Staff employees subject to prior approval of the Board of Directors.

ARTICLE VIII

Contracts, Loans, Checks and Deposits

Section 1. The Board of Directors may authorize any officer or officers, or agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositaries as the Board of Directors may select.

ARTICLE IX

Compensation

Section 1. No Director or officer shall receive compensation for his/her services.

ARTICLE X

Investments

Section 1. Assets Received. All gifts, bequests or other assets received by the Corporation from any source shall be invested, managed and distributed at the discretion of the Board of Directors.

Section 2. Distribution and Use of Assets. Both the corpus and the income of the Corporation may be used in furthering the purposes of the Corporation as set forth in its Articles of Incorporation. No gift, bequest or devise shall be received and accepted if it is to be conditioned or limited in such matters as shall require the disposition of the income or its principal to any person or organization other than educational, charitable, religious or scientific organizations or as shall jeopardize the Federal income tax exemption of this Corporation pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, or any amendment thereto. Otherwise, the Board of Directors shall honor restrictions placed upon a gift or devise by a contributor or decedent if deemed reasonable by the Board of Directors.

ARTICLE XI

Indemnification

Section 1. Satisfaction of Judgments and Compromises. The Corporation shall indemnify its present or past directors or officers for amounts paid in satisfaction of any judgment on or in compromise of any claim against such director or officer by reason of his being or having been director or officer of the Corporation only in accordance with an order of a court of competent jurisdiction or in accordance with a settlement approved by the Board of Directors of the Corporation.

Section 2. Reasonable Expenses and Attorneys' Fees. The Corporation shall indemnify all persons who were or are a party or are threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation, as a director, officer, employee or agent of another association, corporation, partnership, joint venture, trust or entity against expenses (including reasonable attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duties to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. Actions When Corporation Successful. The Corporation shall indemnify any Director, officer, employee or agent of the Corporation in any action in which the Corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in the preceding paragraphs or defense of any claim, issue or matters thereon. Such person shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Defense of Civil or Criminal Actions. Reasonable expenses incurred in defending a civil or criminal action, suit or proceeding referred to herein may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of directors and upon an undertaking by or on behalf of the director, officer, employee or agent as determined herein.

Section 5. Other rights to indemnity. This indemnification article shall not be exclusive of any other rights to which those seeking indemnification may be entitled under an amendment to these By-Laws, agreement, vote of disinterested directors of the Corporation or otherwise, both as to action in his or her official capacity and as to action in another capacity by holding such office and further that such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, devisees and personal representatives of such person.

Section 6. Limitations. The foregoing notwithstanding, a director or officer obtaining indemnification must reimburse the Corporation if it is subsequently determined that the director or officer was not entitled to indemnification by reason of negligence or misconduct in the performance of his or her duties.

Section 7. Insurance. The Board of Directors is authorized to purchase and maintain insurance on behalf of any director, officer, employee or agent of the Corporation or any person who is or was serving at the request of the Corporation, as an officer, director, employee or agent of another association, corporation, partnership, joint venture, trust or other entity against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under other provisions provided herein.

ARTICLE XIII

Amendments

Section 1. All former By-Laws Superseded. These By-Laws shall replace and supersede all By-Laws formerly adopted by the Corporation.

Section 2. Alteration, Amendment, Repeal. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors.

ARTICLE XIV

Adoption

The Board of Directors of the Foundation unanimously adopted these Amended and Restated Bylaws on August 12, 1999, and they supersede the previously existing Bylaws of the Foundation in their entirety.

IN WITNESS WHEREOF, Jeffrey L. Harvard and W. A. Snipes, President and Secretary of the Corporation, respectively, have caused these By-Laws to be executed this ____ day of September, 1999.

President

Secretary

STATE OF NEW MEXICO

(ss. COUNTY OF CHAVES)

The foregoing instrument was acknowledged before me this ____ day of September, 1999, by Jeffrey L. Harvard, President, and by W. A. Snipes, as Secretary, of Eastern New Mexico University - Roswell Foundation, a New Mexico nonprofit corporation, on behalf of said corporation. _____

Notary Public

My Commission Expires: _____

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