MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (MOA) is made by and between New Mexico Tech, also known as the New Mexico Institute of Mining and Technology, hereinafter referred to as the Institute, and New Mexico Tech Alumni Association, also known as the NMTAA, hereinafter referred to as the Association.

Article I
Definitions and Recitals

1.1 Definitions. As used in this Agreement, each of the following terms shall have the respective meanings set forth in this paragraph:
(a) “Association” shall mean the New Mexico Tech Alumni Association.
(b) “Board of Regents” shall mean the Board of Regents of the Institute.
(c) “Board of Directors” shall mean the Board of Directors of the NMTAA.
(d) “Bylaws” shall mean the Bylaws of the NMTAA.
(e) “Director of Office for Advancement” shall mean the person holding the office of Director of Office for Advancement for the Institute.
(f) “President of the Association” shall mean the person holding the office of President of the NMTAA.
(g) “Institute” shall mean New Mexico Tech.
(h) “Strategic Plan” shall mean the Strategic Plan of the NMTAA adopted by its Board of Directors.
(i) “President of the Institute” shall mean person holding the office of President of the Institute.
(j) “Sec. 501(c) (3)” shall mean Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended.
(k) “Articles” shall mean the Articles of Incorporation of the Association on file with the State of New Mexico.

1.2 Recitals. The facts and circumstances giving rise of this Agreement are as follows:
(a) The Institute is a designated State educational institution under Section 11 of Article XII of the Constitution of the State of New Mexico.
(b) The Association is a 501(c)(3) nonprofit corporation recognized by the Internal Revenue Service, organized and incorporated under the laws of the State of New Mexico.
(c) Article IX, Section 14, of the Constitution of the State of New Mexico forbids the making of any donation by a public entity (such as a State educational institution) to a public or private corporation.
(d) Notwithstanding the provisions of Article IX, Section 14, exchanges of value between public entities (such as a State educational institution) and public or private corporations can be made provided they are made under the terms of written agreements compliant with the provisions of NMSA 6-5A-1. This MOA is intended to comply with that statute.
(e) The purpose of the NMTAA is to serve the Alumni of New Mexico Tech and to act as the official agent for this group. The Association intends to encourage a lifelong interest in the Institute by its alumni and friends. Through a variety of actions, events, services, and communications, the Association’s goal is to promote positive feelings and interactions,
and mutual support between the Institute, its alumni, and the communities it serves. To these ends the Association may solicit, invest, hold and expend funds in pursuing these goals.

(f) The Institute recognizes that the Association is a separate corporate entity which is uniquely qualified to enhance the lifelong experience and value of having attended the Institute. The Institute also recognizes that the Association is well suited to assist the Institute in achieving its goals and objectives with respect to alumni relations. Therefore, Institute desires to provide certain services and support to the Association in the form and manner provided herein to maximize the alumni relations utility the Association can achieve in service to the Institute.

(g) The Institute and the Association desire to enter into this Agreement in order to more clearly define their working relationship and undertakings with respect to each other.

The Association and the Institute desire that this MOA memorialize their understanding of the nature and scope of their relationship;

NOW, THEREFORE, the Institute and the Association acknowledge and agree upon the following covenants:

Article II
Undertakings of Association

2.1 Affirmative Covenants. The Association agrees that unless the Institute shall have otherwise consented in writing, during the term of this Agreement the Association will:

(a) Become and remain a viable, functioning, and self-supporting organization, maintaining a physical office (preferably in Socorro, New Mexico) staffed by an executive empowered to speak for the Association on a day-by-day basis and by at least one administrative support person charged with duties relating to reception, communication, and financial accounting.

(b) Maintain its existence as an exempt organization under Section 501 (c)(3).

(c) Conduct its business according to the Articles, Bylaws, and Strategic Plan. The Board of Directors will make any amendments or updates of these documents available to the Institute upon acceptance.

(d) Maintain the composition of the membership of the Board of Directors in accordance with the Bylaws; unless it is determined that such composition would jeopardize the Association’s status as an exempt organization under Section 501 (c)(3).

(e) Maintain officers in accordance with Bylaws and selected by the Board of Directors.

(f) Organize its staff and retain such advisory and other professional services as it deems necessary to perform its primary function as stated in paragraph 1.2 (e) hereof.

(f) In order to fulfill the Association’s purposes, and as a service to the Institute, serve as a secure and up-to-date repository of records relating to the alumni of the Institute, within the boundaries set by applicable information privacy laws, rules, and regulations. In fulfilling this function, the Association and the Institute will cooperate to update and maintain records of the Institute’s alumni, including:

(1) dates of attendance by an alumnus at the Institute;
(2) records generated by subsequent contacts between an alumnus and the Association;

(3) records relating to donations by an alumnus to the Association; and

(4) records relating to the life-time achievements of the alumni of the Institute.

(g) Provide and maintain a data base with continued updates of all Institute alumni for use by the Institute in fundraising and collaborate in other ways in fundraising activities, as outlined in agreements subordinate to or concomitant with this MOA, and also within the boundaries set by applicable information privacy laws, rules, and regulations.

(h) Provide the Institute with regular publications (including an alumni magazine, now known as Gold Pan) to alumni, students, and patrons, and communicate directly with alumni in fulfillment of the Association’s purposes and in support of the Institute.

(i) Continue the NMTAA Distinguished Service and Distinguished Achievement Alumni awards, including selection of recipients according to criteria adopted by the Association, and retention of records relating to these alumni awards.

(j) Conduct, in association with the Institute, an annual homecoming during 49er’s week for Institute alumni, inviting all alumni to return to the Institute at homecoming, and scheduling and coordinating homecoming events and occurrences with the Director of the Office for Advancement.

(k) Schedule, promote, and arrange for alumni hosting of alumni receptions at various locales around the country, in coordination with the Institute’s Office for Advancement.

(l) Assist in responding to periodic inquiries from alumni looking for other alumni and to deal with the disposition and/or location of Institute memorabilia.

(m) Arrange for and assist in representing the Institute, in collaboration with the Office of Admissions, at events around the country in which high school students are made familiar with the advantages of garnering a New Mexico Tech education, and in general promoting New Mexico Tech to prospective undergraduate and graduate students.

(n) Adopt policies designed to encourage and enable the President of the Association to work with the Director of the Institute’s Office for Advancement regarding gifts, developing programs and activities designed to encourage gifts to the Association, the Institute, or other financial vehicles designed to benefit the Institute; and maintaining the integrity of the records of donors to the Association.

(o) Collaborate with the Institute to ensure that any and all gifts intended for scholarship or financial assistance to students will be maintained, used, and disbursed in strict conformity with any and all conditions imposed thereon by the donor(s), and in accordance with Institute rules and regulations regarding awarding financial aid to students.

(p) Receive, deposit, disburse and account for gifts to the Association in accordance with the IRS rules outlined in Sec. 501(c) (3) and in accordance with the Association’s purpose as outlined in the Bylaws.

(q) Obtain such insurance and fidelity bonds as the Board of Directors may determine appropriate.

(r) Maintain a financial accounting system considered adequate under customarily and currently accepted governmental accounting standards, or law may require such other standards as.

(s) Cause its financial operations to be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor.
approved by the Board of Regents, or as otherwise may be permitted or required by applicable state law.

(t) Cause a copy of the annual audit conducted in accordance with paragraph 2.1 (s) hereof to be furnished to the Institute, with the understanding that such audit, exclusive of the names of Association donors and the amount of any donations, shall be a public record, and maintain the working papers associated with such audit available for review by the Institute upon its written request for a period of three years after the audit report date. The audit will be presented by the Treasurer of the NMTAA at the Annual General Meeting of the Association to ensure transparency is maintained between the Board of Directors and the members of the Association. Under no circumstances will the addresses or other personal information of Association donors, or the amount of their donations, become a matter of public record unless required by law.

(u) Evaluate investments made by the Association in accordance with the standards prescribed in Section 6-8-10 NMSA 1978.

2.2 Negative Covenants. The Association agrees that unless the Institute shall have otherwise consented in writing, during the term of this Agreement the Association will not:

(a) Accept a gift, which the President of the Association or its Board of Directors determines will:

(1) Jeopardize the Association’s status as an exempt organization under Section 501 (c)(3);
(2) Create a matching or other obligation from Institute resources;
(3) Be inconsistent with the Association’s understanding of the Institute’s goals and objectives;
(4) Create future liabilities and exposure for the Association;
(5) Be out of compliance with the anti-donation clause Article IX, Section 14 of the Constitution of the State of New Mexico

(b) Take any action, which would endanger the Association’s status as an exempt organization under Section 501 (c)(3).

(c) Amend or revise the Articles, Bylaws or Strategic Plan if such amendment or revision will unilaterally alter terms of this Agreement.

Article III

Undertakings of Institute

3.1 Affirmative Covenants. In furtherance of the purpose of this Agreement and in consideration of the above described services and undertakings to be provided and performed by the Association, the Institute agrees that during the term of this Agreement it will:

(a) Recognize the Association as a significant institutional stakeholder with an interest and ability to assist in achieving the Institute’s objectives.
(b) Recognize the Association as the exclusive alumni association for the Institute, and assist the Association to accomplish its mission, within the boundaries set by applicable information privacy laws, rules, and regulations, by:

(1) Notifying the Association once a student becomes an alumnus; and
(2) Providing to the Association any updated address, telephone numbers, or other information about a former student which the Institute may receive, to be thereafter secured, maintained, and updated by the Association.

(c) Allow the Association to use in connection with its activities the name “New Mexico Tech” and any other trademarks or logos of the Institute as long as such sales do not interfere with or conflict with existing agreements in place between the Institute and other third parties. The Institute grants the Association rights to the branding of merchandise or material with the word “alumni.”

(d) Invite the President of the Association, as a representative of the Board of Directors, or his or her designee, to participate in such Institute administration staff meetings as the Institute may deem necessary to support frank and continuing exchange of information and ideas between the Association and the Institute.

(e) Rely upon the Association to conduct the annual 49ers celebration, with the President of the Association, assisted by the Association’s staff, as project officer-in-charge of 49ers. The Association and the Institute will work together so that the 49ers celebration is the premier alumni event during the academic year, intended to encourage and maintain stronger ties between the Institute and the alumni. To that end the Institute will work with the Association in scheduling student affairs and activities to co-ordinate with the Association’s 49ers activities.

(f) Adopt policies designed to enable the Director of the Office for Advancement to maintain a working relationship with the President of the Association regarding gifts, developing programs and activities designed to encourage gifts to the Institute, the Association, or other financial vehicles designed to benefit the Institute, and maintaining the integrity of the records of donors to the Association.

(g) Designate the Institute’s Director of the Office for Advancement as the person through whom all the Institute’s requests will be made for the disbursement of funds from the Association to the Institute (or to other purposes beneficial to the Institute), and assume total responsibility for and hold harmless and indemnify the Association with respect to the proper and intended application and use of funds.

(h) Ensure that adequate facilities are made available on an as-needed basis for on campus Association activities as long as reasonable notification is made within the policies of the Institute.

(i) Provide staff support for all jointly sponsored activities, including but not limited to the coordination of professional development programs, management of Association advocacy activities on behalf of the Institute, research and analysis on subjects of interest to the Association in fulfillment of its support for the Institute, and revenue-generating strategies to support and sustain the Association.

3.2 Negative Covenants. The Institute agrees that unless the Association shall have otherwise consented in writing, during the term of this Agreement the Institute will not:
(a) Accept a gift, which the Director of Advancement determines, will create a matching or other obligation from Association resources.
(b) Expend funds disbursed to the Institute from any Association account other than in accordance with the purpose for which such account was established and the restrictions of any donor or donors who have contributed to such account, provided that the Association has informed the Institute of the purpose and any donor restrictions pertaining to such account.
(c) The Institute will not provide the Association with any donations. All services, access to assets, or funds provided to the Association shall receive consideration for their value and shall be considered an investment with expected returns to the Institute or shall have reciprocal services, access to assets, or funds provided as enumerated above or as otherwise mutually agreed.

Article IV

Miscellaneous

4.1 Approval of Documents. The Institute acknowledges that it has received and reviewed copies of the Articles and Bylaws and has found the same acceptable. The Association agrees to provide the Institute with copies of any amendments to or revisions of the Articles or Bylaws.

4.2 Public Funds and Property. Except to the extent any specific and lawful conditions of the transfer provide otherwise, any funds or property transferred to the Institute by the Association shall be considered subject to all state laws and regulations governing the disbursement and administration of public funds and public property.

4.3 Status of Association. In the performance of its undertakings pursuant to this Agreement and its other activities, the Association is acting as a separate and independent entity, and not as an agent of the Institute; however, because the Institute and the Association recognize the desirability of maintaining a close working relationship with each other, it is expected that communications will be coordinated to the maximum extent possible among the Director of the Office for Advancement, the Association, and any other Institute officers or affiliated organizations, especially with regard to the development and implementation of fund-raising activities and other projects through which the Association can assist the Institute in achieving its goals and objectives.

4.4 Notices. All notices required and permitted to be given by this Agreement shall be deemed to have been duly given when put in writing and personally delivered to the President of the Institute, in the case of the Institute, and to the President of the NMTAA, in the case of the Association, or when mailed, first class postage paid, addressed to the party to receive such notice as follows:

To Institute: President
New Mexico Tech
801 Leroy Place
4.5 *Term and Termination.* This Agreement shall be in force and effect upon execution hereof by the Institute and the Association, and may be terminated by either party effective upon written notice to the other party at least sixty (60) days in advance thereof. In the event this Agreement is terminated, any of the Association’s accounts, which may held by the Institute for the Association, shall be transferred to the Association on or prior to the effective date of termination. If the Association chooses to dissolve as a corporation of its own accord by unanimous decision of its Board of Directors, all Association funds will be transferred to the Institute except such funds required covering outstanding obligations of the Association.

4.6 *Effect.* Nothing in this Agreement shall be construed as subjecting the Association to the provisions of the Open Meetings Act or making its records (other than the annual audit referred to in paragraph 2.1 (k)), public records within the purview of Sections 14-2-1 through 14-2-3 NMSA (1978).

EXECUTED on behalf of each party as of this date indicated below:
President of New Mexico Tech  Daniel H. Lopez

President of New Mexico Tech Alumni Association
John Dowdle

Date 05-09-2014

Date 5-9-14