

**LICENSE AGREEMENT  
BETWEEN  
THE UNIVERSITY OF NEW MEXICO  
AND  
COUNTY OF BERNALILLO**

**FOR THE PRESERVATION OF THE UNIVERSITY OF NEW MEXICO NORTH  
GOLF COURSE AS OPEN SPACE**

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the Regents of the University of New Mexico ("UNM") and County of Bernalillo ("Bernco"). UNM and Bernco are collectively referred to as "the Parties." The common power with respect to which the Parties are entering into this Agreement is their power to regulate and control real property which each Party possesses within its jurisdiction. The terms and conditions of the Parties' mutual agreement are as set forth in this Agreement.

WHEREAS, the Parties are public agencies, as defined in the Joint Powers Agreements Act, NMSA 11-1-1, et seq. (the "Act") and are authorized by law to enter into this Agreement; and

WHEREAS, pursuant to its authority as provided in NMSA 1978 Sec. 21-7-3 (2012) UNM has the right of control and regulation of the real property that it owns and possesses; and the UNM North Golf Course is and has been owned and operated by UNM as a golf course since the 1930's; and is made up of Nine Holes, associated golf course building, functions and a public trail system, appurtenant thereto; and

WHEREAS, Bernco is a political subdivision of the State of New Mexico, and has the authority, pursuant to Chapter 58 of the Bernalillo County Code, to license, lease or purchase land for the purpose of preserving land as open space; and,

WHEREAS, the UNM North Golf Course is one of the largest areas of open space in the developed area of Bernalillo County and provides tremendous recreational opportunities for the citizens of the County; and,

WHEREAS, The Bernalillo County Open Space Ordinance defines county open space as "all natural areas, cultural and historical sites, agricultural lands and recreational lands," so designated by the County Manager. It includes all buildings, parking lots, trails, bodies of water and other natural and manmade features contained within open space; and,

WHEREAS, County residents living within the developed urban area of the County have very few options to enjoy recreational open space within close proximity to their homes. The UNM North Golf Course offers one of the most convenient open space recreational areas in the urban county; and,

WHEREAS, This course functions on many levels for the residents of Bernalillo County: by encouraging a broad spectrum of golfers from avid players to newcomers, as a healthy living activity; by possessing secondary benefits that all County residents benefit from, due to its overall size, large tree population and its location, the course is functioning as a set of lungs for the County, removing CO2 and other pollutants generated by the Big I and

other urban infrastructure, and cleansing the air; functioning as a storm-water control mechanism, absorbing the rain fall that might otherwise be directed onto streets, channels and neighborhoods surrounding the campus; and most importantly, the course is used by over 7,000 County residents each week for healthy living activities such as golfing, walking and running.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT BERNCO SHALL PROVIDE PAYMENT TO ASSIST THE UNIVERSITY WITH THE REHABILITATION OF THE UNM NORTH GOLF COURSE IN EXCHANGE FOR UNM AGREEING TO PRESERVE THE UNM NORTH GOLF COURSE IN ITS CURRENT CONFIGURATION AND USE AS RECREATIONAL OPEN SPACE, AS FOLLOWS:

1. **AUTHORIZATION AND SCOPE.** The Parties hereby agree to establish a partnership designed to perpetuate the continuation of the current uses of the UNM North Golf Course as recreational open space through the contribution of funds by Bernco for rehabilitation of the golf course facilities.
2. **LICENSE.** In exchange for the consideration described herein and by this License Agreement, UNM shall grant Bernco an Open Space Preservation License (the "License"), and perform the Course Improvements as described below.
3. **OPEN SPACE PRESERVATION.** UNM hereby agrees to operate the UNM North Golf Course as it is currently operated and preserve and maintain the Golf Course, and the unirrigated areas including the surrounding trails (the "License Area") as open space with the uses currently enjoyed by the residents of Bernalillo County including golf, trails and surrounding open space for a period of fifteen (15) years from and after the date entered below (the "Term"). The License Area is further described and delineated in the Boundary Survey in Exhibit A attached hereto.
4. **COMPENSATION.** Bernco will compensate UNM for the License and Course Improvements in the amount of One Million Five Hundred Thousand Dollars and 00/100 (\$1,500,000.00) (the "Fee") payable upon execution of this Agreement.
5. **COURSE IMPROVEMENTS.** UNM agrees to utilize the Fee to install a new irrigation system; replace tree stock; upgrade course improvements such as new seeding of grasses, path and trail rehabilitation; facility upgrades (which shall specifically exclude any and all buildings); and to utilize the Fee to preserve and maintain such improvements during the Term of this Agreement ("Course Improvements"). The priority and sequence of Course Improvements shall be completed in accordance with the Course Improvements Plan attached hereto as Exhibit B. Upon request by Bernco, UNM shall provide a progress report to Bernco as to the status of the Course Improvements.
6. **COUNTY USE OF THE UNM GOLF COURSE.** Bernco shall have the right to utilize the UNM North Golf Course up to two (2) times annually during the Term of this Agreement for the purpose of community recreation or athletic activities on dates mutually agreeable annually by the parties. Bernco shall be responsible for any damages to the UNM North Golf Course arising from Bernco's utilization of the UNM North Golf Course for such events.

7. **NOTICES.** All notices and communications required hereunder shall be in writing and shall be sent to the parties here as follows or to such other address as shall from time to time be designated by written notice by either party.

UNM:  
Office of the EVP for Administration  
Executive Vice President of Administration  
MSC05 3350  
1 University of New Mexico  
Albuquerque, New Mexico 87501

-with a copy to-

Real Estate Department  
Director  
MSC063595  
1 University of New Mexico  
Albuquerque, New Mexico 87501

BERNCO:  
County Manager's Office  
One Civic Plaza NW, 10<sup>th</sup> Floor  
Albuquerque, NM 87103

8. **AMENDMENT.** This Agreement may not be altered, changed, or amended except by instrument in writing executed by the Parties hereto.
9. **BREACH OF THE TERM.** In the event that UNM fails to comply with the provisions of Paragraph 3 herein for the full period of the 15-year Term, UNM will be obligated to return to Bernco the Fee paid to UNM, upon written demand.
10. **TERM EXTENSION.** The Term of this Agreement may be extended by mutual agreement of the parties by written amendment signed by the Parties prior to the expiration of the Term. The Parties shall begin meeting no later than six (6) months prior to the expiration of the Term, to discuss the possible extension of the Term of this Agreement. In the event parties agree to extend the Term, the Parties shall engage in renegotiation of the remaining terms and conditions of this Agreement, as necessary.
11. **WAIVER.** No waiver of any breach or term or condition of this Agreement shall constitute a waiver of any other term or condition of this Agreement, or a subsequent waiver of the same breach or term or condition. No waiver of any term or condition of this Agreement shall be valid or binding unless in writing and signed by the Party alleged to have granted the waiver.
12. **GOVERNING LAW.** This Agreement and the interpretation hereof shall be governed by the laws of the State of New Mexico pertaining to such agreements.

13. **HOLD HARMLESS.** Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.
14. **APPROPRIATIONS.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Bernalillo County Board of Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Bernalillo County Board of Commissioners, this Agreement shall terminate upon written notice being given by Bernco to UNM. Bernco's decision as to whether sufficient appropriations are available shall be accepted by UNM and shall be final.

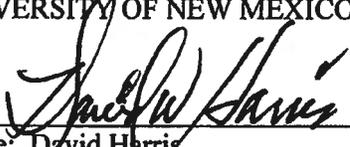
IN WITNESS WHEREOF, the Parties have herein below set their respective hands.

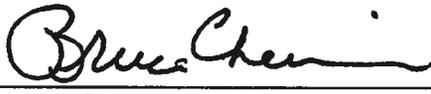
DONE this 14 day of August, 2012

BERNALILLO COUNTY MANAGER

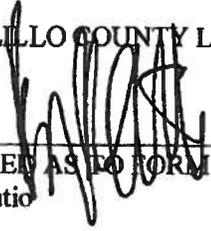
See Attached - approved by Commissioners  
Tom Zdunek

THE REGENTS OF THE  
UNIVERSITY OF NEW MEXICO

By:   
Name: David Harris  
Its: Executive Vice President of Administration,  
CFO & COO

By:   
Name: Bruce Cherrin  
Its: Chief Procurement Officer

BERNALILLO COUNTY LEGAL

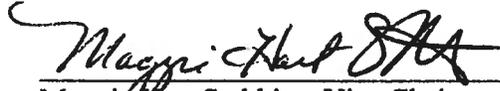
  
APPROVED AS TO FORM  
Randy Autio

**SIGNATURE PAGE**

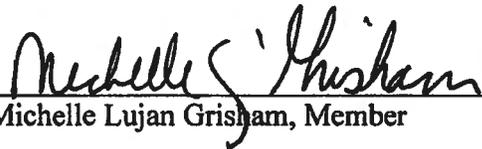
**BOARD OF COUNTY COMMISSIONERS**



Art De La Cruz, Chair



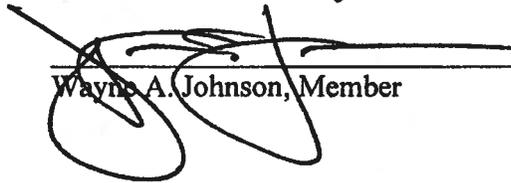
Maggie Hart Stebbins, Vice Chair



Michelle Lujan Grisham, Member



Michael C. Wiener, Member



Wayne A. Johnson, Member

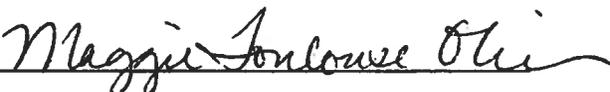
**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

See Attached Approval

Randy Autio, County Attorney

Date: \_\_\_\_\_

**ATTEST:**



Maggie Toulouse Oliver, County Clerk

Date: 9/7/12



## **EXHIBIT B**

### **COURSE IMPROVEMENTS PLAN**

**Xeric course redesign option** (Approximate Completion: During Year 1 of Term)

Estimated Cost: \$150,000

- Survey of License Area
- Architectural design (to include potential turf cutback)
- Engineering scope review

**New irrigation system** (Approximate Completion: During Years 1-2 of Term\*)

Estimated Cost: \$750,000

- Put out a Request for Proposal for new irrigation system
- Award bid to contractor per State procurement process
- Oversee project implementation to completion

**Facility and Course Improvement Plan** (Approximate Completion: During Years 1-3 of Term)

Estimated Cost: \$250,000

- Design and improvement work for trails and paths which shall comply with National Collegiate Athletic Association requirements for cross country conference and championship events
- Engineer proper grading of 10,300 linear feet
- Define 10 foot width of walking path using suitable materials (crusher fines, asphalt, or other)

**Tree Maintenance and Replacement Plan** (Approximate Completion: During years 1-3 of Term) Estimated Cost: \$200,000

- Analysis of the condition of existing trees
- Selection of tree species based on location on course:
  - Areas along fairways (larger stature, long-term durability)
  - Areas along recreational spaces (variety of color, size, texture and draught tolerance)
  - In compliance with National College Athletic Association requirements for cross country conference and championship events

**Project Contingency: \$150,000**

- Annual maintenance of Course Improvements beyond installation to include but not limited to such items as:
  - Replacement of path materials
  - Tree trimming maintenance
  - Irrigation maintenance

\*Subject to University approval processes and Procurement Code processes.