

## **SECOND AMENDED AND RESTATED BYLAWS NEW MEXICO TECH FOUNDATION**

The original Bylaws of the New Mexico Tech Foundation (“Foundation”), formerly known as The New Mexico Tech Research Foundation, dated in 1965, were revised in 1989 and amended and restated in 2018. In accordance with Article IX of its articles of incorporation dated as of August 19, 1965, as amended and restated in 2018, the Board of Trustees of the Foundation make these Second Amended and Restated Bylaws of the Foundation.

### **ARTICLE 1 [The Foundation]**

The Foundation is a corporation organized under the New Mexico Nonprofit Corporation Act, N.M. Stat. §§ 53-8-1 et seq. (1978). The Foundation is organized and operated exclusively for charitable and educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code (26 U.S.C.). The Foundation’s primary purpose is to promote and advance the interests of, and provide financial support to, the New Mexico Institute of Mining and Technology.

The principal office of the Foundation shall be located at 801 Leroy Place, Socorro, New Mexico 87801. The Foundation may have such other offices, within the State of New Mexico, as the Board of Trustees may determine or as the affairs of the Foundation may require from time to time.

The Foundation shall have and continuously maintain in the State of New Mexico a registered office, and a registered agent whose office is identical with

such registered office, as required by law. The registered office may be, but need not be, identical with the principal office in the State of New Mexico, and the address of the registered office may be changed from time to time by the Board of Trustees.

ARTICLE II  
[Membership]

Section 1. No Members. The Foundation shall have no members.

ARTICLE III  
[Board of Trustees]

Section 1. General Powers. The affairs of the Foundation shall be managed by a Board of Trustees (“Board”), which shall have the authority, and may exercise the powers, granted by the law of New Mexico and the Bylaws.

Section 2. Number, Tenure and Qualifications. The Board of Trustees shall consist of (a) at least five (5) and not more than fifteen (15) individuals, (b) the President and Vice President for Administration and Finance of the New Mexico Institute of Mining and Technology, who shall be ex officio Trustees, (c) a member of the Board of Regents of the New Mexico Institute of Mining and Technology, who shall be an ex officio Trustee and (d) a student of New Mexico Institute of Mining and Technology, who shall be currently enrolled as a full-time student and shall serve as an ex officio non-voting observer. All Trustees except the ex officio student member shall be voting Trustees. Except as provided in the Articles of Incorporation for the first Board of Trustees and except for ex officio

Trustees, a Trustee may not serve more than two terms and each such term shall be three (3) years and until his or her successor shall have been elected and qualified. Trustees shall be elected at the Board's annual meeting; provided, however, that Trustees, other than ex officio Trustees, appointed on or after the date of these restated and amended Bylaws may serve an initial term of one year or two years as necessary to achieve a staggering of terms so that approximately one-third of the terms of such Trustees will expire in any single year. The term of an ex officio Trustee shall be coterminous with the office, regency or student-enrollment by which such Trustee was appointed ex officio. Trustees, other than ex officio Trustees, who have previously served for the maximum number of consecutive terms may be nominated and elected to the Board after an absence of at least two years. Residency in New Mexico is not a necessary qualification for nomination or appointment to the Board of Trustees. The Trustees may from time to time determine other or additional qualifications for nomination and appointment.

Section 3: Annual Meeting; Regular Meetings. A regular meeting of the Board of Trustees shall be held at least four times in a calendar year at the call of the President of the Board. The annual meeting of the Board shall be held during the last regular Board meeting of the calendar year. The schedule of meetings, including the place and time of the meetings, may be determined from time to time by the Board. Attendance by a Trustee at an annual or regular meeting by video or audio conference via telephone, computer or similar communications equipment shall constitute attendance at such meeting. Notice of annual and regular meetings

of the Board is to be given at least one (1) month previously by U.S. or electronic mail as outlined in Section Five, Article III.

Section 4. Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of the President of the Board or the majority of the Trustees. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of New Mexico, as the place for holding any special meeting of the Board called by them.

Section 5. Notice. Notice of any special meeting of the Board of Trustees shall be given at least two weeks previously thereto by written notice delivered personally or sent by U.S. or electronic mail to each Trustee at his/her address as shown by the records of the Foundation. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by electronic mail, such notice shall be deemed to be delivered when sent. Any Trustee may waive notice of any meeting. Attendance by a Trustee by video or audio conference via telephone, computer or similar communications equipment shall constitute attendance, provided all Trustees in attendance can hear and communicate with the each other. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the

notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws. If a Trustee fails to attend two consecutive meetings, he/she automatically forfeits his/her position on the Board, and a successor may be named as outlined in Section Eight, Article III.

Section 6. Quorum. A majority of the Board of Trustees, whether by attendance in person or by audio or telephonic conference or other electronic means by which all Trustees in attendance can hear and communicate with each other, shall constitute a quorum for the transaction of business at any meeting of the Board. A Trustee shall not be eligible to use a proxy or otherwise designate another individual to serve or act in his or her place.

Section 7. Manner of Acting. The act of a majority of the Trustees present in person or by telephonic or other electronic means at a meeting at which a quorum is present shall be the act of the Board of Trustees, unless the act of a greater number is required by law or by these Bylaws.

Section 8. Resignation; Removal; Other Vacancies. A Trustee's resignation from the Board of Trustees is effective upon receipt by the President of the Board of the Trustee's written notice of resignation or, where the resigning Trustee does not provide such written notice, upon written confirmation by the President to the resigning Trustee that he or she has received the resigning Trustee's oral notice of resignation. A Trustee may be removed with or without cause by an affirmative vote of two-thirds (2/3) of the Trustees present at any regular or special meeting of the Board.

Any vacancy occurring in the Board of Trustees and any trusteeship to be filled by reason of an increase in the number of Trustees shall be filled by the Board of Trustees. A Trustee elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

Section 9. Compensation. Trustees as such shall not receive any stated salaries for their services, but by resolution of the Board of Trustees a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; but nothing herein contained shall be construed to preclude any Trustee from serving the Foundation in any other capacity and receiving compensation therefor.

Section 10. Informal Action by Trustees. Any action required by law to be taken at a meeting of Trustees, or any action which may be taken at a meeting of Trustees, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the Trustees.

Section 11. Conflicts of Interest. At any meeting of the Board of Trustees, any Trustee who has a personal financial interest in the action being discussed or taken by the Board shall recuse himself or herself from the Board's discussion of the matter and from the vote, if any, on the proposed action. The recusal shall be noted in the minutes of the meeting. Where a Trustee has so recused himself or herself, the recused Trustee shall be counted for purposes of determining whether a quorum for the meeting is present, but shall not be counted for purposes of determining the majority necessary to approve the proposed action.

ARTICLE IV  
[Officers]

Section 1. Officers. The officers of the Foundation shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Trustees), a Secretary, a Treasurer and such other officers as may be elected in accordance with the provisions of this Article. The Board of Trustees may elect or appoint such other officers, as may be elected in accordance with the provisions of this Article. The Board of Trustees may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time by the Board of Trustees. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election and Term of Office. The officers of the Foundation shall be elected by the Board of Trustees at the annual meeting of the Board of Trustees. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. New offices may be created and filled at any meeting of the Board of Trustees. Each officer shall hold office for a term of one (1) year and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Officers may be reelected to up to two (2) consecutive terms of one (1) year each. No individual may serve in a particular office for more than three (3) consecutive full terms;

provided further, however, that after an absence of at least one (1) year an individual may be reelected to a particular office in which he or she previously served.

Section 3. Removal. Any officer elected or appointed by the Board of Trustees may be removed by a majority of the Board of Trustees whenever in its judgment the best interests of the Foundation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Executive Committee until the next meeting of the Board of Trustees.

Section 5. President. The President shall be the principal executive officer of the Foundation and shall in general supervise and control all of the business and affairs of the Foundation. He/she shall preside at all meetings of the Board of Trustees. He/she may sign, with the Secretary or any other proper officer of the Foundation authorized by the Board of Trustees, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Trustees has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws or by statute to some other officer or agent of the Foundation; and in general he/she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Trustees from time to time.

Section 6. Vice President. In the absence of the President or in event of his/her inability or refusal to act, the Vice President (or in the event there be more

than one Vice President, the Vice Presidents in order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him/her by the President or by the Board of Trustees.

Section 7. Treasurer. If required by the Board of Trustees, the Treasurer shall give a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Trustees shall determine. He/she shall have charge and custody of and be responsible for all funds and securities of the Foundation; receive and give receipts for moneys due and payable to the Foundation from any source whatsoever, and deposit all such moneys in the name of the Foundation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VI of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him/her by the President or by the Board of Trustees.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Trustees in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the Foundation and see that the seal of the Foundation is affixed to documents when necessary, the execution of which on behalf of the Foundation under its seal is

duly authorized in accordance with the provisions of these Bylaws; keep a register of the post-office address of each Trustee which shall be furnished to the Secretary by such Trustee; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him/her by the President or by the Board of Trustees.

Section 9. Assistant Treasurers and Assistant Secretaries. If required by the Board of Trustees, the Assistant Treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Trustees shall determine. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the President or the Board of Trustees.

## ARTICLE V [Board Committees]

Section 1. Committees of Trustees. The Board of Trustees, by resolution adopted by a majority of the Trustees in office, may designate and appoint one or more committees, each of which shall consist of two or more Trustees, which committees, to the extent provided in said resolution shall have and exercise the authority of the Board of Trustees in the management of the Foundation; provided, however, that no such committee shall have the authority of the Board of Trustees in reference to amending, altering, or repealing the Bylaws; amending the 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 and assets of the Foundation; authorizing the voluntary dissolution of the Foundation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Foundation; or amending, altering, or repealing any resolution of the Board of Trustees which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Trustees, or any individual Trustee, of any responsibility imposed upon it or him/her by law.

Section 2. Executive Committee of the Trustees. The Board realizes that day to day operation of the Foundation must proceed in an orderly manner between meetings of the Board of Trustees. Therefore, the Board established an Executive Committee consisting of the President of the Foundation, the Vice President, the Secretary or his/her designee, and any other member of the Board as nominated and duly elected by the full Board of Trustees. The business transactions of the Executive Committee shall not conflict with Article IV, Section 1, but shall include payment of invoices, incurring and payment of legal fees, deposits, and investments thereof, contract negotiation, plus all other operations deemed necessary by the Executive Committee. The election of said Executive Committee members shall be for a one-year term, however, members of the Executive Committee may serve consecutive terms upon proper re-election at the annual meetings.

Section 3. Governance Committee of the Trustees. The Board realizes that its planning for governance may be aided by establishing committee of Trustees to consider and make recommendations to the Board about the qualifications of individuals for nomination and appointment to Board and methods of recruitment of individuals for nomination and potential appointment and to consider and make recommendations to the Board about slates of individuals for nomination and election as officers of the Board. Therefore, the Board established a Governance Committee consisting of four (4) Trustees. The Governance Committee's duties include (a) identifying, recruiting and recommending candidates for nomination and appointment to the Board, both to fill such vacancies as might arise from time to time and for the longer term purposes of trusteeship-succession planning, (b) evaluating the functioning and service of the Board, Trustees and committees, (c) making recommendations for the growth and development of Trustees and (d) making recommendations for improvement of the Board's governance policies, practices and procedures.

Section 4. Other Committees. Other committees not having and exercising the authority of the Board of Trustees in the management of the Foundation may be designated by a resolution adopted by a majority of the Trustees present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Trustees of the Foundation, and the President of the Foundation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint

such member whenever in their judgment the best interests of the Foundation shall be served by such removal.

Section 3. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the Trustees of the Foundation and until his/her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a Trustee thereof.

Section 5. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 6. Quorum. Unless otherwise provided in the resolution of the Board of Trustees designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7. Rules. Each committee may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Trustees.

## ARTICLE VI [Financial Matters]

Section 1. Contracts. The Board of Trustees may authorize any officer or officers, agent or agents of the Foundation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument

in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Foundation, shall be signed by such officer or officers, agent or agents of the Foundation and in such manner as shall from time to time be determined by resolution of the Board of Trustees. In the absence of such determination by the Board of Trustees, such instruments shall be signed by at least two members of the Executive Committee.

Section 3. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies, or other depositories as the Board of Trustees may select.

Section 4. Gifts. The Board of Trustees may accept on behalf of the Foundation any contribution, gift, bequest, or device for the general purposes or for any special purpose of the Foundation.

## ARTICLE VII [Books and Records]

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Trustees and committees having any of the authority of the Board of Trustees, and shall keep at the registered or principal office a record giving the names and addresses

of the Trustees. All books and records of the Foundation may be inspected by any Trustee, or his/her agent or attorney for any purpose at any reasonable time.

ARTICLE VIII  
[Fiscal Year]

The fiscal year of the Foundation shall begin on the first day of July and end on the last day of June of each year.

ARTICLE IX  
[Seal]

The Board of Trustees shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Foundation and the words “Corporate Seal. 1965 New Mexico.”

ARTICLE X  
[Waiver of Notice]

Whenever any notice is required to be given under the provisions of the New Mexico nonprofit corporation act or under the provisions of the Articles of Incorporation or the Bylaws of the Foundation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

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ARTICLE XI  
[Indemnification]

The Foundation shall indemnify any Trustee or Officer, or former Trustee or former Officer, of the Foundation against all actions, proceedings, causes of action or claims, civil or criminal, and including but not limited to those seeking damages or other monetary relief, equitable relief, expenses as well as costs and attorney's fees reasonably incurred in connection with such Trustee's or Officer's defense of or against any such action, proceeding, cause of action or claim in which such Trustee or Officer is made a party or is threatened to be made a party by reason of being or having been a Trustee or Officer, as the case might be, except to the extent such defense has been assumed by the Risk Management Division of the State of New Mexico under the Tort Claims Act. The indemnification may include any amounts paid to satisfy a judgment or compromise or settle a claim, other than amounts paid by New Mexico under the Tort Claims Act. The Trustee or Officer shall not be indemnified if such Trustee or Officer shall be adjudged to be liable on the basis that he or she (a) breached the duties of his or her trusteeship or office and (b) the breach constitutes willful misconduct or recklessness. Advance indemnification shall be allowed for reasonable costs and expenses to be incurred in connection with such defense provided the Trustee or Officer must reimburse the Foundation if it is subsequently determined that the Trustee or Officer was not entitled to indemnification.

ARTICLE XII  
[Amendment]

These Bylaws may be altered, amended or repealed and new bylaws may be adopted by a majority of the Trustees present at any regular meeting or at any special meeting, if at least two weeks' written notice is given of intention to alter, amend or repeal or to adopt new bylaws at such meeting.

**Approved this \_\_\_\_ day of June 2020.**

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Joanna DeBrine  
President, Board of Trustees  
New Mexico Tech Foundation