

# **CONSOLIDATED ENDOWMENT FUND AGREEMENT**

## **Substantive Revisions from the June 29, 2005 Agreement**

- 1. Adds emphasis on the Board of Regents acting as fiduciary for the Land Grant Trust as well as the governing board of the university;**
- 2. Emphasizes the role of the Board of Trustees as trustee of the Fund;**
- 3. Authorizes the Treasurer to approve other funds for investment the Consolidated Fund;**
- 4. Authorizes the Treasurer to make exceptions to the general allocation of earnings or loss when the normal allocation results in a material inequity to one or more endowments;**
- 5. Emphasizes that indemnification for fiduciaries of the Fund, who are related to the Foundation and/or the university is for the “maximum” allowed by law;**
- 6. Sets the fiduciary standard for investment management of the fund at the prudent investor (expert) level and the prudent person level for all other activities;**
- 7. Adds Addendum #1 regarding the considerations for acceptance of the endowment fee charged by the Foundation; and**
- 8. Directs the chairs of the UA and UA Foundation Audit Committees to agree upon a process for selection of a single (one) audit firm to conduct the annual audit of the Consolidated Endowment Fund and their respective institutions.**

March 23, 2009

**CONSOLIDATED ENDOWMENT FUND AGREEMENT**  
**As Amended and Restated Effective July 1, 2008**

The Board of Regents of the University of Alaska (the “Board of Regents”) and the University of Alaska (the “University”) and the Board of Trustees of the University of Alaska Foundation (the “Board of Trustees”) enter into this Consolidated Endowment Fund Agreement (“Agreement”) to be effective on the 1st day of July 2008. This Agreement amends and replaces the Consolidated Endowment Fund Agreement established July 1, 1997 and most recently amended and restated effective June 29, 2005.

WHEREAS, the Governor signed into law SB 84 passed by the Twentieth Alaska Legislature, First session, transferring management of the Land-Grant Endowment Trust Fund to the Board of Regents; and

WHEREAS, the Board of Regents, acting as both the named fiduciary (1) under AS 14.40.400 as Trustee for the Endowment Trust Fund, established and maintained by the Territory and subsequently the State of Alaska, and (2) under AS 14.40.280 as the governing board of the University of Alaska for all other funds participating in the Consolidated Endowment Fund, has the authority and responsibility to manage the Endowment Trust Fund and the University’s endowments in accordance with AS 14.40.400, AS 14.40.280 and AS 37.10.071; and

WHEREAS, the Board of Trustees, acting as the governing board of the University of Alaska Foundation (the “Foundation”) has the authority and responsibility to manage the Pooled Endowment Funds and all other funds held by the Foundation; and

WHEREAS, the Foundation was established to solicit, accept, hold, and manage gifts and donations, including endowments, for the exclusive benefit of the University; and

WHEREAS, the Foundation has established a unitized Pooled Endowment Fund to facilitate investment of the endowments it holds for the benefit of the University; and

WHEREAS, the Foundation currently maintains an Investment Committee, the members of which are experienced professionals with expertise in investment management, governance and fiduciary responsibilities; and

WHEREAS, the Board of Regents through its policies has authorized the Foundation to accept, hold, and manage all gifts to the University as trustee; and

WHEREAS, the Board of Regents has determined that its fiduciary duties and responsibilities for the management of the Endowment Trust Fund and the endowments held on behalf of the University can best be achieved by delegating to the Foundation and its Investment Committee the fiduciary authority and powers to perform the duties as described in this Agreement and in the Consolidated Endowment Fund Investment Policy; and

**Consolidated Endowment Fund Agreement  
As amended and restated effective July 1, 2008**

WHEREAS, the Board of Regents and the Foundation have chosen to consolidate the respective endowment investments so as to more effectively utilize the investment expertise currently available within the Foundation's Investment Committee, incur lower investment management costs, achieve greater investment diversification, and capture additional opportunities for enhanced investment performance;

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Definitions.** As used in this Agreement, the following terms shall have the following meanings:

Consolidated Endowment Fund or Fund – The fund into which the Endowment Trust Fund, the Land Grant Inflation-Proofing Fund and such other funds as may be authorized by the Treasurer are combined for investment purposes with the Foundation's Pooled Endowment Fund.

Consolidated Endowment Fund Investment Policy – An investment policy adopted by both the Board of Regents and the Board of Trustees, which governs the investment activities of the Consolidated Endowment Fund.

Endowment Trust Fund – The separate Endowment Trust Fund maintained by the Board of Regents pursuant to AS 14.40.400.

Land Grant Inflation-Proofing Fund or Inflation-Proofing Fund – A fund established by the Board of Regents in order to help supplement the inflation-proofing of the Endowment Trust Fund.

Pooled Endowment Fund – The Foundation's pooled investment fund established by the Board of Trustees to facilitate management of the various endowment funds held by the Foundation for or on behalf of the University of Alaska.

Investment Committee or Committee – The Investment Committee as described in Section 5 of this Agreement.

Treasurer – Treasurer of the Foundation, who serves in that position subject to appointment by the University President in consultation with the Chair of the Board of Trustees.

**Section 2. Effective Date and Term.** This Agreement shall be effective from July 1, 2008 until terminated in accordance with Section 8 of this Agreement.

**Consolidated Endowment Fund Agreement  
As amended and restated effective July 1, 2008**

**Section 3. Appointment.**

3.1 The Foundation shall serve as trustee and manage the Consolidated Endowment Fund in accordance with the terms and conditions set forth herein and in the Consolidated Endowment Fund Investment Policy. The Foundation is hereby delegated the powers and duties with respect to the Fund, which are required to manage the Fund in accordance with this Agreement and the Consolidated Endowment Fund Investment Policy as may be amended from time to time. These powers and duties include those provided to, and/or required of, a fiduciary as described in AS 37.10.071.

3.2 The amounts invested in the Fund from the Endowment Trust Fund and the Inflation Proofing Fund are invested at the discretion of the Board of Regents. The Board of Regents may withdraw all or any part of the Endowment Trust Fund or Inflation Proofing Fund at any time upon 60 days written notice to the Foundation, subject to availability of liquid resources of the Fund and considerations of the potential adverse impacts on other endowments participating in the Fund.

**Section 4. Powers of the Foundation.** The Foundation shall exercise its powers under this Agreement through the Investment Committee and the Treasurer as further described and enumerated in the Consolidated Endowment Fund Investment Policy, which is incorporated as an integral part of this Agreement by reference.

**Section 5. Investment Committee.**

5.1 The Committee shall have all of the powers necessary to perform the responsibilities stated in this Agreement and in the Consolidated Endowment Fund Investment Policy. The Committee shall be responsible for establishing and revising asset allocation targets; planning and approving investments in alternative asset classes; approving investment mandates, guidelines and performance benchmarks; evaluating investment performance; and directing the selection and termination of managers for the Fund. All such actions may be carried out without an obligation on the Committee's part to give prior notice to the University, except as may be provided by this Agreement.

5.2 The Committee shall also serve as an advisor to the Board of Trustees in matters related to the Fund, endowment administration, spending rates, and other investment issues. The Committee is not an advisory committee to the Board of Regents; however, from time to time, members of the Committee may be invited to discuss issues of common interest with the Board of Regents.

5.3 The Committee shall consist of not more than eight regular members appointed by the Chair of Board of Trustees in consultation with the Chair of the Board of Regents. In addition, the Chair of the Board of Trustees shall serve as an ex-officio voting

**Consolidated Endowment Fund Agreement**  
**As amended and restated effective July 1, 2008**

member of the Committee and the Foundation President shall serve as an ex-officio non-voting member of the Committee.

(a) The regular members of the Committee shall be appointed for terms of four years and may be reappointed. The terms of the current members appointed may be shortened or extended as determined by the Chair of Board of Trustees so that no more than two of the regular members' terms expire each year.

(b) The regular members of the Committee shall serve at the pleasure of the Chair of the Board of Trustees and may be removed from office for any reason or no reason. The removal of a member from the Committee must be expressed in writing and delivered in-person or by certified mail. A member who is removed from office may not participate in Committee business as a member and may not be counted for purposes of establishing or maintaining a quorum after written notice of removal is issued.

(c) A vacancy on the Committee caused by early departure of a member shall be filled promptly by appointment of a regular or temporary member by the Chair of the Board of Trustees. An appointee to a vacancy shall hold office for the balance of the term for which the appointee's predecessor on the Committee was appointed or such shorter period as may be determined by the Chair of the Board of Trustees.

5.4 The Chair of the Board of Trustees shall, in consultation with the chair of the Board of Regents, appoint a Committee Chair.

5.5 Four voting members of the Committee shall constitute a quorum for the transaction of business and the exercise of the powers and duties of the Committee. Action may be taken only upon affirmative vote of a majority of the members in attendance.

5.6 The Committee may adopt rules and procedures for the conduct of its business that do not conflict with bylaws of the Foundation and such rules may be amended only by an affirmative vote of a majority of its members. The Committee shall meet with the frequency it deems necessary to carry out its duties.

5.7 The Committee Chair shall provide (1) for reasonable advance notice of each Committee meeting to be given to all Committee members and the Board of Regents' Finance and Audit Committee Chairs and (2) an opportunity for attendance at the meeting and comments, in person or by teleconference as appropriate. Not more than three regents, as may be determined by the Chair of the Board of Regents, may attend any meeting of the Committee, unless appropriate public notice is provided.

**Section 6. Treasurer.** The Foundation shall exercise its execution and operational powers under this Agreement through its Treasurer as provided in this section. The Treasurer shall:

6.1 Hold and invest the Fund as a commingled pool of investments.

6.2 Hold investments of the Fund in the name of the Foundation, the University, the Fund, or any fund or nominee as may be authorized by the Treasurer.

**Consolidated Endowment Fund Agreement**  
**As amended and restated effective July 1, 2008**

6.3 Invest and reinvest all investable resources of the Fund.

6.4 Provide or cause to be provided quarterly investment performance reports on the Fund to the Investment Committee, the Finance Committee Chair and the Board of Regents' Finance and Audit Committee Chairs.

6.5 Provide to the Committee, the Board of Trustees and the Board of Regents (1) annual audited financial statements for the Fund prepared in accordance with generally accepted accounting principles, and (2) a presentation on the financial status of the Fund and the Foundation.

6.6 Transfer to the University no less frequently than annually, on a schedule to be mutually agreed upon, amounts required for distribution under policies established by the Board of Trustees or the Board of Regents as appropriate.

6.7 Account for the assets and activity of the Fund in accordance with standards established by the Treasurer including, but not limited to, the following:

(a) Assets of the Fund will be valued at estimated fair value, when determinable.

(b) The last calendar day of each month shall be designated the Valuation Date.

(c) Each participating fund shall be credited with unit shares and fractions of unit shares based directly upon the Net Asset Value per share as of the previous valuation date and the amount contributed to the Fund.

(d) Each participating fund shall be charged with unit shares and fractions of unit shares based directly upon the Net Asset Value per share as of the previous valuation date and the amount withdrawn from the Fund.

(e) Each unit share represents a beneficial interest in the Fund equal to the proportion which it bears to the total unit shares outstanding.

(f) Total Return shall be allocated monthly as an adjustment to the Net Asset Value per share based on the total return for the month and the total unit shares outstanding at the end of the month.

(g) Contributions and withdrawals will be effective as of the Valuation Date for the month preceding receipt or distribution by the Fund. Contributions to the fund will receive a full month's earnings allocation for the month of addition. Withdrawals from the fund will receive no earnings allocation for the month of withdrawal. The Treasurer may direct adjustment of the earnings allocation when, due to timing or extraordinary market conditions, the general allocation results in a material inequity to one or more endowments.

(h) Net Asset Value (including current income, realized returns and unrealized gains/losses for the period) shall be computed as of the Valuation Date.

**Consolidated Endowment Fund Agreement**  
**As amended and restated effective July 1, 2008**

**Section 7. Fiduciary Standards.** In exercising investment, custodial, or depository powers or duties, the Board of Trustees, its Investment Committee and staff shall be subject to the prudent investor (expert) standard as it applies to similarly situated individuals managing endowments of similar size and complexity. For all other decisions and actions the prudent person standard shall apply. In accordance with AS 37.10.071 all actions taken by a fiduciary of the Fund with regard to the Fund shall be taken in the sole financial best interest of the Fund and the fiduciaries shall treat beneficiaries with impartiality.

**Section 8. Amendment, Termination and Transfer of Assets.**

8.1 Amendment. This Agreement may be amended at any time only by written instrument duly approved by the respective boards.

8.2 Termination. Either party may terminate this Agreement without cause upon 120 days' written notice to the other party at the address listed below. Provided however, the Board of Regents may terminate this Agreement upon 60 days' written notice to the Foundation in the event that the Board of Regents has specific concerns with the management of the Fund and such concerns cannot be resolved within 30 days of that notice.

8.3 Transfer of Assets. Upon termination of this Agreement, the Foundation shall pay all obligations of the Fund and convey or transfer to the Board of Regents, or at the discretion of the Board of Regents a successor trustee, all assets applicable to its interest in the Fund. At the discretion of the Treasurer, such transfers may be made in cash or in-kind over a reasonable period of time. However, undivided interests in non-marketable or illiquid investments may be held by the Foundation or a successor trustee on behalf of the Board of Regents until maturity or other disposition. In the event of notice of termination, the Board of Regents may, upon written notice, limit the reinvestment, encumbrance or disbursement of assets pending the return of its interests in such assets.

8.4 Survival After Termination. The terms and conditions of this Agreement shall survive until all assets of the Consolidated Endowment Fund are conveyed or transferred to the respective parties.

**Section 9. Notice.** Notice shall be deemed delivered upon personal delivery or three days following mailing, via certified mail, to the following officers or their then current successors:

Board of Regents:

Ms. Cynthia Henry  
Board of Regents Chair  
University of Alaska  
202 Butrovich Building  
910 Yukon Drive  
P. O. Box 755000  
Fairbanks, AK 99775-5000

**Consolidated Endowment Fund Agreement  
As amended and restated effective July 1, 2008**

Foundation:

Mr. Michael T. Felix  
Board of Trustees Chair  
University of Alaska Foundation  
206 Butrovich Building  
910 Yukon Drive  
P. O. Box 755080  
Fairbanks, AK 99775-5080

**Section 10. Miscellaneous.**

10.1 Indemnification. In order to facilitate the recruitment of competent fiduciaries, except as otherwise provided by law, the University and the Foundation will indemnify the members of the Board of Regents, the Board of Trustees, the Committee, the Treasurer, and employees of the University and the Foundation for all acts taken in carrying out their responsibilities under this investment policy to the maximum extent provided by law. This indemnification is intentionally broad, but shall not provide indemnification for embezzlement or diversion of funds for personal benefit. The indemnification described herein includes all expenses of defending an action, any monetary recovery in any court or arbitration proceeding, and, if the claim is settled out of court with the concurrence of the University and the Foundation, shall include any monetary liability under such settlement.

10.2 Governing Law and Venue. This Agreement has been adopted and shall be governed and construed in accordance with the laws of the state of Alaska. Any disagreements or lawsuits arising out of this Agreement shall be brought in the Superior Court for the state of Alaska, Third Judicial District, in Anchorage, Alaska, unless federal jurisdiction applies in which case venue shall lie in the U.S. District Court for Alaska in Anchorage, Alaska. For purposes of the relationship established by this Agreement, the Board of Regents, the University, and the Endowment Trust Fund are instrumentalities of the state of Alaska and may be sued only as provided for actions against the state of Alaska in Alaska Statute 09.50.250 and other applicable statutes and rules of court.

10.3 Severability. If any part, term, or provision of this Agreement is determined by a court or agency of competent jurisdiction to be unlawful or in conflict with the laws of the United States or the state of Alaska, the validity of the remaining portion or provisions of the Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, terms, or provision held to be invalid.

10.4 No Assignment. This agreement is entered into based in large part upon the nature and responsibilities of the parties hereto and their unique relationship to each other. Neither party shall assign all or any part of its interest in this Agreement nor any attempt at such assignment shall be void and shall, at the sole discretion of the other party, terminate this Agreement. Notwithstanding the above, the Foundation may delegate to one or more investment



**Consolidated Endowment Fund Agreement  
As amended and restated effective July 1, 2008**

managers a portion of its powers, duties, and responsibilities with respect to investments of the Fund, as appropriate, according to the provisions of this Agreement and AS 37.10.071.

10.5 Fees. Fees charged by the Foundation for the management of the Land-Grant Endowment Funds shall be addressed in a separate Addendum #1 to this Agreement.

10.6 Independent Audit Services. The University and the Foundation have traditionally engaged one audit firm to conduct the annual financial statement audits of their respective organizations and the Consolidated Endowment Fund in order to capture the cost and efficiency savings associated with having one firm conduct all of the audit activities for both entities and the Consolidated Endowment Fund. The chairs of the respective Audit Committees of the University and the Foundation shall agree to a process for the solicitation, selection and engagement of a single audit firm to conduct the annual independent audits of Consolidated Endowment Fund and their respective entities that is consistent with AS 36.30 and the bylaws and policies of the respective organizations.

University of Alaska Board of Regents

University of Alaska Foundation Board of Trustees

By: \_\_\_\_\_  
Cynthia Henry, Board of Regents Chair

By: \_\_\_\_\_  
Michael T. Felix, Board of Trustees Chair

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

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

University of Alaska

University of Alaska Foundation

By: \_\_\_\_\_  
Mark Hamilton, President

By: \_\_\_\_\_  
Mary Rutherford, President

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

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

**CONSOLIDATED ENDOWMENT FUND AGREEMENT  
As Amended and Restated Effective July 1, 2008**

**ADDENDUM #1  
Effective July 1, 2008**

The Board of Regents of the University of Alaska (the “Board of Regents”) and the University of Alaska (the “University”) and the Board of Trustees of the University of Alaska Foundation (the “Board of Trustees”) enter into this Consolidated Endowment Fund Agreement, Addendum #1 (“Addendum #1”) to be effective on the 1st day of July 2008;

WHEREAS, the Board of Regents and the Board of Trustees recognize their fiduciary responsibility to maintain fees and spending allowances at responsible levels and understand that it may be necessary to consider a reduction in the endowment spending allowances for subsequent years in order to maintain the combined distributions for fees and spending at responsible levels; and

WHEREAS, through the effective date of this Addendum #1, the endowment funds have consistently achieved returns in excess of the policy benchmark under the guidance and leadership of the Investment Committee; and

WHEREAS, inquiries by the staff regarding the cost of outsourcing for services similar those performed by the UA Foundation’s Investment Committee indicated that the outsourcing cost would be 50 to 120 basis points, depending on the amounts invested in alternative investments; and

WHEREAS, the UA Foundation’s Investment Consultant, Paul Erlendson of Callan Associates, indicated that the valuation of the services of the Investment Committee based on a percentage of assets under management, or the excess earnings, in corroboration with other information are reasonable methods of valuing the services; and

WHEREAS, for purposes of estimating the reasonableness of the fee, the Foundation’s Treasurer and the Executive Committee considered the cost of outsourcing the activity, the relative returns of the portfolio, and the expertise of the members of the Investment Committee; and

WHEREAS, the Foundation’s Executive Committee has proposed to establish annual endowment management fee for the Land Grant Endowments at a rate of 50 basis points;

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Endowment Management Fee.**

1.1 Annual Basis Point Charge. Prior to March 1 each year, the Foundation President shall provide notice to the University President and the Board of

**Consolidated Endowment Fund Agreement,  
As amended and restated effective July 1, 2008  
Addendum #1**

Regents Chair of the proposed Annual Basis Point Charge for the following fiscal year. Upon acceptance of the endowment fee proposal in accordance with procedures to be established by the Board of Regents, the authorized Annual Basis Point Charge shall become effective for the applicable fiscal year.

1.2 General Endowment Fee. The Land-Grant Endowment Funds (currently the Endowment Trust Fund, the Inflation-Proofing Fund and the Cosgrave Fund) shall be charged an annual endowment fee in an amount equal to the authorized Annual Basis Point Charge times the balance of the respective endowments as of December 31st of the preceding fiscal year. The fee shall be assessed in 12 equal installments.

1.2 Alternative Endowment Fee. Upon notice of termination of the Consolidated Endowment Fund Agreement or the failure to accept the proposed Annual Basis Point Charge, the quarterly fee charged to the Land-Grant Endowment Funds shall be an amount equal to 1/4th of the most recent authorized Annual Basis Point Charge times the quarterly beginning account balance of the subject funds under management as may be determined by the Foundation Treasurer.

**Section 2. Effective Date and Term.** This Addendum shall be effective commencing July 1, 2008 and remain in effect for the period the Foundation manages the subject funds and shall survive beyond the termination of the related Memorandum, unless this Addendum is otherwise amended or terminated in accordance with Section 3 of this Addendum.

**Section 3. Amendment and Termination.**

3.1 Amendment. This Addendum #1 may be amended at any time by mutual agreement of the parties.

3.2 Termination. This Addendum will terminate upon complete distribution of all of the Land Grant Endowment Funds held on behalf of the Board of Regents or the University.

University of Alaska  
Board of Regents

University of Alaska Foundation  
Board of Trustees

By: \_\_\_\_\_  
Cynthia Henry, Board of Regents Chair  
University of Alaska

By: \_\_\_\_\_  
Michael T, Felix, Board of Trustees Chair  
University of Alaska Foundation

By: \_\_\_\_\_  
Mark Hamilton, President

By: \_\_\_\_\_  
Mary Rutherford, President