

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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This Settlement Agreement and Release of Claims ("Agreement") is effective as of the ~~24th~~ day of November, 2019 by and between Robert Davie ("Mr. Davie") and the Board of Regents of the University of New Mexico ("UNM"), collectively referred to as the "Parties."

RECITALS

1. Mr. Davie is employed by UNM as Head Coach/Football pursuant to an employment contract ("Employment Contract") and the document titled Employment Contract Addendum ("Addendum") executed by the Parties on or about June 15, 2016, and attached hereto and incorporated herein as Attachment A.
2. Pursuant to Paragraph 2 of the Addendum, the term of the Employment Contract is for the period beginning July 1, 2016 and ending December 31, 2021.
3. UNM and Mr. Davie reached an agreement under which Mr. Davie will separate from UNM prior to the end of the term of the Employment Contract upon the terms and conditions set forth below.
4. This Agreement shall be fully effective on November ~~24~~, 2019, nevertheless, Mr. Davie shall continue as Head Coach/Football until the conclusion of the 2019 UNM intercollegiate football season on November 30, 2019 which shall be Mr. Davie's last day of employment at UNM; 15 RED
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5. These Recitals are material terms of this Agreement.

TERMS AND CONDITIONS

The Parties, agree as follows:

1. In consideration for Mr. Davie's promises and waiver and release of claims set forth in Paragraph 2 herein and all subparts thereto, UNM agrees and promises as follows:
 - a. UNM will pay Mr. Davie the sum of eight hundred twenty-five thousand dollars (\$825,000.00).

- b. UNM shall deliver Mr. Davie's final regular paycheck on or about December 31, 2019.
- c. Should Mr. Davie wish to obtain health or dental insurance under the provisions of COBRA, and so long as he continues to pay for such insurance, UNM shall pay for such insurance an amount equal to its current share of Mr. Davie's insurance premiums, plus any potential additional amount of an increased premium that results from obtaining coverage under COBRA. UNM's obligation under this provision shall end twenty-four (24) months after November 30, 2019.
- d. UNM shall pay the sum stated in Paragraph 1(a) and 1(c), above, in thirty (30) equal monthly installments which will be subject to state and federal employment taxes and standard wage withholdings and will be paid through UNM's payroll system with payment issued as a payroll draft.
- e. UNM shall make each monthly installment payment to Mr. Davie on or about the last day of each month.
- f. UNM waives and releases any and all liability, demands, claims or suits that it has or could have asserted against Mr. Davie related to or arising out of his employment at UNM, whether the claims are known or unknown, suspected or unsuspected, under any common law theory or any statute of the United States or New Mexico, including but not limited to all claims based in tort, contract or equity.

2. In consideration for UNM's promises set forth in Paragraph 2 above, Mr. Davie agrees and promises as follows:

- a. Mr. Davie has not filed any complaint and has no pending claims against UNM or its past or present officers, employees, agents, directors, Regents, or any other persons acting on behalf of UNM in state or federal court or with any administrative agency.
- b. Mr. Davie will not file, initiate, prosecute, or otherwise pursue any claim or cause of action in any forum, whether judicial, administrative, grievance or

other, for his own benefit, or the benefit of any other person, against UNM or its past or present officers, employees, agents, directors, Regents, or any other persons acting on behalf of UNM arising out of or related to Mr. Davie's employment with UNM or his separation from UNM.

- c. Mr. Davie waives and releases any and all liability, demands, claims or suits arising out of or relating to his employment with UNM or his separation from UNM that he has or could have asserted against UNM or its past or present officers, employees, agents, directors, Regents or any other persons acting on behalf of UNM, whether the claims are known or unknown, suspected or unsuspected, under any common law theory or any statute of the United States or New Mexico, including but not limited to all claims based in tort, contract, or equity, and claims arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621 *et seq.* ("ADEA") or other state and federal anti-discrimination laws.
- d. Mr. Davie has read this document and understands that he is giving a full and final release to UNM and its past and present officers, employees, agents, directors, Regents, and any other persons acting on behalf of UNM for all liability, demands, claims or suits arising out of or related to his employment with UNM his separation from UNM which he has or could have asserted against UNM, whether the claims are known or unknown, suspected or unsuspected.
- e. Mr. Davie did not incur a work-related injury during his tenure with UNM nor is he aware of any factual basis for a claim or belief that UNM has defrauded any local, state or federal governmental entity.
- f. This document is a full and final expression of Mr. Davie's agreement with UNM and no other promises have been made to him by UNM or its officers, employees, agents, directors, Regents, or any other persons acting on behalf of UNM that are not set forth in this document.
- g. Mr. Davie affirms that he executes this document voluntarily and of his own free will.

- h. Mr. Davie is responsible for any and all tax liabilities relative to this Agreement and acknowledges that UNM has not made any representations regarding the tax treatment of the payments described in Paragraph 1 herein and all subparagraphs thereto.
- i. Mr. Davie has been advised to consult an attorney and seek independent legal advice prior to accepting the terms set forth in this Agreement, including but not limited to Mr. Davie's release of ADEA claims.
- j. Mr. Davie acknowledges that before signing this Agreement, he has had the opportunity to consult with legal counsel, and that he signs this Agreement voluntarily and with the knowledge that he is abandoning any and all rights to seek or obtain any legal or equitable remedy against UNM for any claims arising out of or related to his employment with UNM or his separation from UNM.
- k. Pursuant to the provisions of the Older Workers' Benefit Protection Act:
 - i. Mr. Davie waives any and all rights and claims he may have under the Age Discrimination in Employment Act of 1967, as amended, concerning the issues, claims, or facts arising out of or related to his employment with UNM or separation from UNM.
 - ii. Mr. Davie is aware he is not waiving any rights or claims that do not arise out of or are not related to his employment with UNM or separation from UNM.
 - iii. This Agreement is clearly written in a manner calculated to be understood by Mr. Davie and that he has, in fact, read and understood it;
 - iv. The terms and conditions herein provide valuable consideration to Mr. Davie in addition to anything of value to which he already is entitled;
 - v. Mr. Davie was given a reasonable period of time within which to consider this Agreement before signing it;
 - vi. Mr. Davie was advised to consult with his attorney before executing this Agreement.

3. In further consideration for the promises contained in this Agreement, the parties also expressly declare and agree:

a. Mr. Davie will not defame or disparage UNM, its past or present officers, employees, agents, directors, Regents, or any other persons acting on behalf of UNM, including but not limited to the UNM Athletics Department or Director of Athletics, Eddie Nunez, regarding any aspect of his employment at UNM. Breach of this provision will relieve UNM of any obligations it undertakes pursuant to this Agreement.

b. Those employees under the direct control and supervision of the UNM president, including but not limited to the UNM Director of Athletics and those employees directly reporting to the Director of Athletics, will not defame or disparage Mr. Davie, his agents, attorneys, family or any other persons acting on behalf of Mr. Davie, regarding any aspect of Mr. Davie's employment at UNM. Breach of this provision will relieve Mr. Davie of any obligations he undertakes pursuant to this Agreement. In order to prevent breach of this provision, UNM shall undertake its best efforts to ensure compliance with this provision. This will include warning all members of the class forbidden from disparaging Mr. Davie about this provision and ensuring that their violation of this provision shall result in their being subject to adverse employment action.

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c. For the purposes of this Agreement, the term "disparage" means the verbal or written making of false and injurious statements, proven beyond a reasonable doubt to be made by Mr. Davie or the control group identified in subparagraph 3(b), ~~that is not a group~~.

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d. UNM and Mr. Davie will bear their own respective costs and attorneys' fees for all matters related to Mr. Davie's employment and separation from UNM, and all matters contemplated by this Agreement.

e. Any dispute arising out of or relating to this Agreement shall be referred to binding arbitration pursuant to the New Mexico Uniform Arbitration Act, NMSA 1978 §§ 44-7A-1, *et seq.*, and shall be arbitrated in Bernalillo County, New Mexico.

f. This Agreement does not constitute and is not to be construed as an admission by UNM of any unlawful, improper, or wrongful conduct by UNM or its past

or present officers, employees, agents, directors, Regents, or any other persons acting on behalf of UNM.

- g. This Agreement does not constitute and is not to be construed as an admission by Mr. Davie of any unlawful, improper, or wrongful conduct by Mr. Davie.
- h. The laws of the State of New Mexico shall govern the enforceability, interpretation, and legal effect of this Agreement.
- i. If any part of this Agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the Agreement will remain valid and enforceable.
- j. A photocopy, facsimile or electronic copy of this Agreement shall have the same force and effect as its original.
- k. In event of a conflict between the terms of the Addendum and this Agreement, the terms of this Agreement shall govern.

MR. DAVIE IS ADVISED HE HAS UP TO TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS AGREEMENT. MR. DAVIE ALSO IS ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

MR. DAVIE MAY REVOKE THIS AGREEMENT FOR A PERIOD OF SEVEN (7) CALENDAR DAYS FOLLOWING THE DAY HE SIGNS THIS AGREEMENT. ANY REVOCATION WITHIN THIS PERIOD MUST BE SUBMITTED, IN WRITING, TO LORETTA P. MARTINEZ (CHIEF LEGAL COUNSEL FOR UNM) AND STATE, "I HEREBY REVOKE MY ACCEPTANCE OF OUR AGREEMENT." THE REVOCATION MUST BE PERSONALLY DELIVERED TO MS. MARTINEZ OR HER DESIGNEE, OR MAILED TO MS. MARTINEZ AND POSTMARKED WITHIN SEVEN (7) CALENDAR DAYS AFTER MR. DAVIE SIGNS THIS AGREEMENT.

MR. DAVIE AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT, DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL CONSIDERATION PERIOD.

MR. DAVIE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION,
ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE
ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST UNM.

[End. Signature pages follow.]

EXECUTED AND AGREED TO BY:

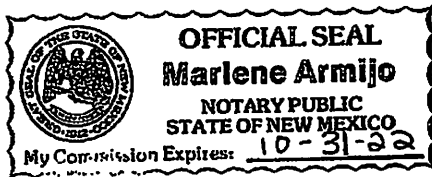
Robert Davie

ROBERT DAVIE

Date: 11/25/19

STATE OF NEW MEXICO)
) ss.
COUNTY OF Bernalillo)

Subscribed and sworn to before me, a Notary Public, this 25th day of November
2019.



(seal)

[Signature]
Notary Public

My Commission Expires: Oct. 31, 2022

ON BEHALF OF THE REGENTS OF THE UNIVERSITY OF NEW MEXICO

Garnett S. Stokes

GARNETT S. STOKES
University President

Date: 11/25/2019

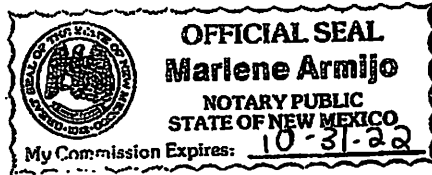
STATE OF NEW MEXICO)

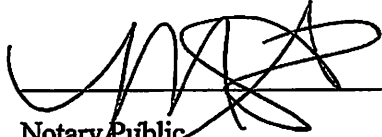
) ss.

COUNTY OF BERNALILLO)

Subscribed and sworn to before me, a Notary Public, this 25th day of November,
2019.

(seal)





Notary Public

My Commission Expires: Oct. 31, 2022

Strike the language in section 3.k. and replace as follows:

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- k. This agreement is not final until approved by the Board of Regents pursuant to Regent Policy 7.8. Once approved, the agreement will be effective as of the original date signed by the parties.

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Strike the language in section 3.k. and replace as follows:

- k. This agreement is not final until approved by the Board of Regents pursuant to Regent Policy 7.8. Once approved, the agreement will be effective as of the original date signed by the parties.