

**OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is made and will be effective the 1st day of October, 2011 by and between **THE UNIVERSITY OF MONTANA WESTERN** (the "University") and **THE UNIVERSITY OF MONTANA WESTERN FOUNDATION**, an independent Montana non-profit corporation (the "Foundation").

**Recitals:**

- A. The University is a public institution of higher learning and is a Montana University System campus.
- B. The Foundation is a private and independent Montana non-profit corporation organized to support the mission of the University through private support.
- C. The Montana Board of Regents is responsible for ensuring the integrity and reputation of the University and its programs and must be assured that the independent University affiliated Foundation will adhere to ethical standards appropriate to such organizations.
- D. To accomplish this objective, the Board of Regents has approved a policy which requires the University and the Foundation to enter into an operating agreement that outlines their relationship and defines appropriate Foundation activities.
- E. The University and the Foundation recognize this operating agreement in accord with Board of Regents Policy 901.9.

NOW, THEREFORE, based upon the foregoing recitals and the mutual promises contained herein, the parties agree as follows:

- 1. The Foundation's responsibilities are to:
  - A. Solicit, receive, hold in trust, re-invest, administer and manage funds (including both restricted and unrestricted gifts) consistent with the wishes of its donors, and to make expenditures to or for the benefit of the University, and with University consent, manage selected University funds and other University resources to the extent permissible by law. Gifts made to the Foundation must be accounted for in Foundation accounting records; and gifts made directly to the University must be accounted for in University accounting records. Ownership of gifts made directly to the University shall be maintained by the University.
  - B. Conduct its fundraising operations in a manner that is consistent with the mission and priorities of the University.
  - C. Comply with all applicable state and federal laws and policies of the Montana University System.
  - D. Accept, account for and receipt gifts, grants, and endowments by preparing and maintaining financial and accounting records in comprehensive, generally accepted accounting principles as approved by an independent auditor.
  - E. Annually submit audited financial statements and a list of the Foundation's officers and Board of Directors to the Chancellor of the University for review if requested by the Commissioner of Higher Education and the Board of Regents.
  - F. Maintain and enforce at all times an appropriate conflict of interest policy for directors of the Foundation Board and employees of the Foundation.
  - G. Seek and obtain input from the University (through the Chancellor of the University) before defining priorities for Foundation fundraising efforts.
  - H. Fund a mutually agreed upon portion of the Foundation Executive Director/President's salary including any such person serving on an interim basis.
  - I. Employ and evaluate its employees, including the Foundation Executive Director/President.
  - J. Adhere to its conflict-of-interest policy.
  - K. Earmark a portion of its unrestricted funds to a discretionary fund for the Chancellor of the University and transfer a percentage of those funds annually to the institution in compliance with state law and University policies for reimbursing appropriate expenditures. All such expenditures and transfers shall comply with Section 501(c)(3) of the U.S. Internal Revenue Code and Montana state laws applicable to non-profit, tax exempt corporate entities, and be fully consistent with the Foundation mission and objectives.
  - L. Control and manage all assets of the Foundation, including prudent management of all gifts, grants and donations to the Foundation consistent with donor intent.

- M. Assume responsibility for the performance and oversight of all aspects of its operations based on a comprehensive set of by-laws.
  - N. Serve as the primary depository of private gifts to the Foundation and transfer funds to the designated entity within the University in compliance with applicable laws, University policies and gift agreements.
2. The University's responsibilities are to:
    - A. Through the Chancellor of the University, keep the Foundation apprised of the University's needs and priorities;
    - B. Provide adequate space and facilities for the Foundation staff and its operations;
    - C. Provide salary support for administrative staff in an amount and for positions as agreed upon by the University and the Foundation in compliance with all laws and Montana University System policies.
  3. The Board of Regents and the University recognize that the Foundation is a private, independent corporation with the authority to keep all records and data confidential consistent with applicable laws.
  4. The Executive Director/President of the Foundation shall be included as a member of the University Council and senior administrative team.
  5. As partial consideration for the services provided by the Foundation to the University under this agreement, the University agrees to pay the Foundation the sum of \$10,000 for its services. As additional consideration for the services provided hereunder the University will provide the space and utilities for the Foundation as set forth in Paragraph 2B above.
  6. No employee of the Montana University System will hold a voting position within the Foundation.
  7. In performance of this agreement, the parties shall not discriminate on the basis of gender, race, color, religion, marital status, creed, age, political belief, physical or mental disability, national or ethnic origin, or military veteran status.
  8. All activities and services performed by the Foundation shall be on an independent basis separate from the University. The Foundation, as an independent entity, will have the right to control and determine the method and manner of performing its duties hereunder.
  9. The Foundation, in close consultation with the University and to the extent permissible by law, has the right to decide on the hiring, evaluation, promotion and termination of the Foundation Executive Director/President as the Foundation CEO and other Foundation staff, as well as outside contractors and external consultants.
  10. The University and the Foundation may share the cost of salary and benefits of all Foundation staff, who shall be considered University employees subject to all rules, policies and laws applicable to Montana University System and Montana state employees for all purposes whenever an employee is funded wholly or in part with University funds. The Foundation shall transfer, in a monthly payment to the University, an amount equivalent to 29 percent of the Foundation Executive Director/President salary and benefit costs plus an additional lump sum payment amount to be agreed upon by the University and the Foundation for additional Foundation staff salary and benefit costs.
  11. This Agreement shall be in effect for two years unless terminated by an agreement in writing and signed by both parties.

Signed as of the Effective Date

By \_\_\_\_\_ (Date) \_\_\_\_\_  
 Richard Storey, Chancellor  
 The University of Montana Western

By \_\_\_\_\_ (Date) \_\_\_\_\_  
 Mary Ann Nicholas, Chair  
 The University of Montana Western Foundation Board