

OPERATING AGREEMENT
Between
MONTANA STATE UNIVERSITY
And
MONTANA STATE UNIVERSITY FOUNDATION, INC.

THIS AGREEMENT ("Agreement"), entered into as of this ____ day of ____, 2011 by and between Montana State University and the Montana State University Foundation, Inc., a non-profit corporation.

RECITALS

WHEREAS, Montana State University is Montana's land grant institution of higher education and a unit of the Montana University System;

WHEREAS, the Montana State University Foundation, Inc. ("the Foundation") and the Montana State University Alumni Association, Inc. ("the Alumni Association"), both separately incorporated entities, are organized under Section 501(c)(3) of the Internal Revenue Code ("IRC");

WHEREAS, the Board of Directors of the Foundation and the Board of Directors of the Alumni Association, independently and unanimously approved identical resolutions on September 9, 2011 to initiate a corporate merger of the two incorporated entities;

WHEREAS, the Foundation, which will be the surviving legal entity upon completion of the corporate merger, is registered with the State of Montana to conduct business as the Montana State University Alumni Foundation, and is hereinafter referred to as the Montana State University Alumni Foundation ("Alumni Foundation");

WHEREAS, the Alumni Foundation is an independent corporation and governed by the Articles of Incorporation and Bylaws affected by the Board of Directors of the Foundation, Board of Directors of the Alumni Association, and Board of Governors of the Alumni Foundation on September 9, 2011;

WHEREAS, the University recognizes the Alumni Foundation as its sole affiliated Foundation for the purposes outlined in Section 901.9 of the Montana University System Policy and Procedures Manual;

WHEREAS, the University seeks to invest the assets of the University, and the Alumni Foundation desires to provide, for a fee, prudent and professional asset investment and management services;

WHEREAS, the University desires the financial support of private constituencies, and the Alumni Foundation desires to provide, for a fee, donor relation services designed to inspire, commit, steward, and renew philanthropic support of private third parties including individuals, corporations, foundations, and other private entities that seek to support the University;

WHEREAS, the University desires an association with alumni and friends, and the Alumni Foundation desires to provide, for a fee, alumni relation services to engage, establish, and nurture lifelong relationships with students, graduates, parents, friends, and other communities that seek a meaningful association with the University;

WHEREAS, the University desires the advocacy and support of private constituencies, and the Alumni Foundation desires to provide, for a fee, constituent related services, programs, events, communications, and other activities that encourages proactive advocacy and purposeful engagement.

WHEREAS, the Alumni Foundation is uniquely positioned to provide the aforementioned services in an efficient and cost-effective manner as it retains professionals experienced in constituent relations, programs, and services that nurtures meaningful relationships with and between students, alumni, donors, volunteers, and other constituents who seek to advance the University;

WHEREAS, the contracted services aforementioned are consistent with the missions of the University and the Alumni Foundation.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and commitments of the University and the Alumni Foundation ("Parties") contained herein, the mutual benefits to be gained by the performance hereof, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1 – University Name, Seal and Logotype

Consistent with its mission to help advance the plans, priorities, and objectives of the University, the Alumni Foundation is granted the use of the name Montana State University and is granted the use of the University's logo under the University's Graphic Identity and Branding Policy until such time as the Montana State University Alumni Foundation dissolves, the Montana State University Alumni Foundation ceases to be recognized as a tax exempt organization, or the University's President withdraws recognition of the Alumni Foundation.

At all times, the Alumni Foundation will operate under its own seal and logotype and shall not use the University seal in the promotion of the Alumni Foundation business and activities unless separately approved.

Section 2 – The Alumni Foundation's Relationship to the University

The Alumni Foundation Board of Governors is responsible for the control and management of all assets of the Alumni Foundation, including the prudent management of all gifts made to the Alumni Foundation consistent with donor intent and according to all applicable laws.

The Alumni Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon legal and ethical guidelines and policies.

The Alumni Foundation is responsible for the employment, compensation, and evaluation of its employees, including the President and Chief Executive Officer of the Alumni Foundation ("the Alumni Foundation President/CEO"). As described below, the Alumni Foundation shall support the University and the University affiliates and respective programs through the services outlined in Section 5, unless the parties agree otherwise and when modified by an attachment to this agreement.

Section 3 – University’s Relationship to the Alumni Foundation

The University President is responsible for communicating the University’s priorities and long-term plans to the Alumni Foundation in writing and on a regular basis.

The University recognizes that the Alumni Foundation is a private corporation with the authority to keep all records and data confidential to the extent allowed by law. As such, the University will create, maintain, enforce, and adhere to policies and procedures that protect the confidential nature of the Alumni Foundation’s data and foster the individual reasonable expectation of privacy attendant to that data as allowed by law.

The Alumni Foundation President/CEO shall be included as a member of the University President’s cabinet and senior administrative team and the University President shall include the Alumni Foundation as an active and prominent participant in the strategic planning for the University.

The University President shall serve as an ex-officio, non-voting member of the Alumni Foundation Board of Governors and shall assume a prominent role in appropriate constituent related activities.

Section 4 – University Responsibilities: the University shall provide all services and attendant fees to the Alumni Foundation as outlined below:

4.1 – Funding Priorities. At least annually, the University President will present to the Alumni Foundation President/CEO with a written list of the University’s current private funding priorities. The University shall rely upon the Alumni Foundation, or its designee, to assess the priorities and the private funding feasibility of each.

4.2 – Integrated Advancement. The University will actively coordinate its communications, internal relations, and external relations activities with the Alumni Foundation to develop a programmatic culture within the University’s student, alumni, and friends that encourages increased constituent engagement, philanthropic support, and private advocacy.

4.3 – Consideration. In consideration for the Alumni Foundation’s services including but not limited to the responsibilities listed in Section 5 (the Alumni Foundation Responsibilities), the University will provide the Alumni Foundation with fair and reasonable payment for services as negotiated by the parties. The consideration for this contract term is included as Attachment A.

4.4 – Donor, Alumni, and Constituent Related Activities. The University shall establish and enforce policies that support the Alumni Foundation’s ability to coordinate all philanthropic, alumni, and constituent related activities that seek and solicit private support and advocacy to benefit the University.

Additionally, the University recognizes the Alumni Foundation as having sole responsibility for the constituent related activities described in this agreement, on behalf of the University and certain affiliated campuses. The University President, deans, directors, appropriate administrators, other University officials, and University-selected or University-sanctioned volunteers shall work in conjunction with the Alumni Foundation administration and staff to develop and steward philanthropic

support, constituent engagement, and advocacy of University priorities.

The University will use its best efforts to redirect gifts, bequests, and other private charitable support made to the University to the Alumni Foundation.

4.5 – Provision of Data. When allowed by law, the University shall provide to the Alumni Foundation data reasonably requested by the Alumni Foundation and deemed necessary by the Alumni Foundation for the maintenance and support of the Alumni Foundation’s efforts under this agreement.

4.6 – Other Services. The University will also provide other services at a mutually agreed upon rate. If the Alumni Foundation requires external services, the University and the Alumni Foundation may agree to terms relating to such services under a separate agreement. Those services include but are not limited to, information systems and technologies, property security, custodial services, and facility maintenance. The parties will enter into a separate agreement.

Section 5 – Alumni Foundation Responsibilities: The Alumni Foundation shall provide the University with the following discrete activities:

5.1 – Alumni Relations and Association. The Alumni Foundation shall be responsible for various programs, services, and initiatives to strategically enhance and expand alumni engagement with the University (“alumni relations”) and shall employ, compensate, and evaluate one or more staff members to plan, direct, and implement these efforts.

5.2 – Donor Relations. The Alumni Foundation shall be responsible for various programs, services, and initiatives to strategically enhance and expand donor engagement with and private support for the University (“donor relations”) and shall employ, compensate, and evaluate one or more staff members to plan, direct, and implement these efforts.

5.3 – Volunteer Relations. The Alumni Foundation shall be responsible for various programs, services, and initiatives to strategically enhance and expand volunteer advocacy in support of the University (“volunteer relations”) and shall employ, compensate, and evaluate one or more staff members to plan, direct, and implement these efforts.

5.4 – Event Services. The Alumni Foundation shall provide comprehensive event planning and management services in support of the Alumni Foundation’s programs and at the request of the University President or his/her designee. Additionally, the Alumni Foundation shall coordinate events planned by and/or hosted by other University-related offices when those events are in support of the funding priorities established by the Alumni Foundation and the university.

5.5 – Communications Services. The Alumni Foundation shall provide constituent-related communications services to the University upon request and when related to the Alumni Foundation’s efforts and activities.

5.6 – Gift Acceptance and Acknowledgment. The Alumni Foundation will establish, adhere to, and periodically assess its gift acceptance and fund management policies and procedures. The Alumni Foundation will promptly acknowledge and issue receipts for all assets given to the Alumni Foundation and provide appropriate recognition and stewardship of such support. If assets are received by the

University in lieu of the Alumni Foundation, the Alumni Foundation will provide appropriate recognition for such gifts when properly notified by the University.

5.6 – Constituent Records. The Alumni Foundation shall establish and enforce policies and procedures to comply with all applicable laws and regulations and to protect the confidentiality of the Alumni Foundation information and the reasonable expectation of privacy attendant to constituent data.

5.7 – Asset Investment. When the University deposits funds with the Alumni Foundation for investment purposes, the Alumni Foundation may commingle those funds with the Alumni Foundation's funds and other funds held by the Alumni Foundation in a pooled investment portfolio ("Pooled Investments"). In doing so, it is mutually understood that:

- (a) the University retains ownership of University funds;
- (b) the Alumni Foundation is authorized to invest the University funds in the same manner as other the Alumni Foundation funds;
- (c) University funds are subject to the Alumni Foundation's administrative fees in accordance with the Alumni Foundation's Fund Administration Policies;
- (d) University funds may be pooled with the Alumni Foundation's institutional funds and other funds for the purpose of participating in the Pooled Investments;
- (e) there is no trust relationship between the University and the Alumni Foundation express or implied;
- (f) Pooled Investments are invested in accordance with the Alumni Foundation's investment policy;
- (g) there is an inherent risk involved with investing that is beyond the control of the Alumni Foundation, including the potential for loss of the University's principal in the initial investment, loss of subsequent deposits, loss of interest or appreciation, and loss of other financial gains;
- (h) neither party is obligated to offer or accept investment advice to or from the other party;
- (i) the Alumni Foundation has not and does not hold itself out as an investment advisor or as a professional investment corporation;
- (j) the University representative for all matters relating to the investment of University funds by the Alumni Foundation is the University President or his or her designee.

For all University funds invested by the Alumni Foundation, the Alumni Foundation shall provide periodic summaries and confirmations of balances of University funds as may be requested or required. The University President may attend any Alumni Foundation Board of Governors meeting where decision or discussion regarding the investment policy may be held. Additionally, the Alumni Foundation shall provide the University with a copy of the most recent investment policy.

Upon written notice from an authorized University administrator requesting withdrawal of University funds from the Pooled Investments, the Alumni Foundation will withdraw the funds within a reasonable length of time such that removal of the funds may be completed without adversely affecting the remaining investment portfolio.

5.8 Accounting principles. The Alumni Foundation will maintain financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting, as approved by an independent auditor.

5.9 – Asset Management. The Alumni Foundation will establish and, from time to time, modify asset-

allocation, disbursement, and spending policies and procedures that adhere to all current and future applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as amended or modified from time to time.

The Alumni Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, and other forms of property, including the immediate investment of gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

5.10 – Fund Administration and Distribution. The Alumni Foundation will administer private gifts to benefit the University and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and fund agreements.

The Alumni Foundation's disbursements on behalf of the University must be for reasonable expenses that support the University and its programs, are consistent with donor intent, and do not conflict with any applicable laws and regulations.

When establishing a new account, the Alumni Foundation will disclose any terms, conditions, or limitations legally imposed by the donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate acknowledgment of such terms, conditions, or limitations and documentation of compliance.

5.11 – Funding of the Alumni Foundation Operations. The Alumni Foundation is responsible for establishing a financial plan to pay the costs of the Alumni Foundation programs, operations, and services. In addition to the consideration for the services provided under this agreement, the Alumni Foundation has the right to impose reasonable fee assessments on funds established with the Foundation.

Except as outlined herein or as otherwise agreed, the Alumni Foundation, at its own expense, will provide office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations. In fulfilling this requirement, the Alumni Foundation, in its sole discretion, may lease the necessary space and/or equipment from the University or another entity. Any lease shall be governed by a separate agreement.

5.12 – Provision of Data. The Alumni Foundation will engage an independent accounting firm annually to conduct an audit of the Alumni Foundation's financial records and will provide the University with a copy of the annual audited financial statements no later than October 1st of each year, as required by Board of Regents' Policy 901.9. Other data shall be provided from time to time to enable the University to complete its audited financial statements and fulfill information requests by credit rating agencies. Such information includes but is not limited to the Alumni Foundation's asset allocation breakdown and investment performance, as well as an annual, detailed listing of payments made from the Alumni Foundation to the University.

5.13 – Other Responsibilities.

With the explicit approval of the Alumni Foundation Board of Governors, the Alumni Foundation may from time to time serve as an instrument for entrepreneurial activities for the University including but

not limited to the purchasing, developing, or managing of real estate for the University, as well as University-related improvements or expansion.

The Alumni Foundation may accept licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by third parties, or engage in other activities to increase the Alumni Foundation revenue consistent with its mission.

5.14 Salary Supplement. No salary supplements for a unit chief executive officer will be underwritten by the Alumni Foundation without the approval or and public disclosure by the Board of Regents.

5.15 – Compliance. In fulfilling these obligations, the Alumni Foundation shall comply with applicable state and federal law and its own policies and procedures, including maintenance of a conflict of interest policy for board members and staff and adherence to the requirements of the Campus Affiliated the Alumni Foundations Policy, Section 901.9, Montana Board of Regents Policies and Procedures Manual.

Section 6 – Confidentiality and Access to Information by Other than Alumni Foundation Employees:

the Alumni Foundation will provide copies or provide access to all public documents of the Alumni Foundation including:

- (a) Policies and procedures documentation, including:
 - a. Gift Acceptance Policy,
 - b. Investment Policies,
 - c. Disbursement Guidelines,
 - d. Accountability Policies,
- (b) Organizational documents, including articles of incorporation and corporate bylaws;
- (c) Audited financial statements;
- (d) Form 990, Return of Organization Exempt from Income Tax.

The parties agree that confidential information which is not available for public inspection includes, but is not limited to, the following:

- (a) Information relating to donors and prospective donors:
 - a. Contact information including, but not limited to, addresses, phone numbers, and email addresses;
 - b. Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning or gift planning matters;
 - c. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge;
 - d. Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge;
 - e. Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor;
 - f. Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This does not apply to a gift or pledge from a publicly held business corporation;

- (b) Information relating to fundraising plans and strategies;
- (c) Trade secret information and information relating to the business of any the Alumni Foundation subsidiary which, if released, could create a competitive disadvantage;
- (d) Individual employee information other than name, title and salary;
- (e) Individual student information not otherwise exempted;
- (f) Information relating to trusts and annuities administered by the Alumni Foundation, except as to actual gifts to the Alumni Foundation from such a trust or annuity; and
- (g) Other information protected by law.

When necessary or beneficial to the efficient execution of the Alumni Foundation activities, the Alumni Foundation may provide access to the Alumni Foundation data and records to select the University personnel on a limited, need-to-know basis in accordance with applicable laws and the Alumni Foundation policies and guidelines. Providing such access shall not negate the confidential nature of the Alumni Foundation's information and records or the classification of such information and records as trade secrets. Additionally, providing such access does not undermine the reasonable expectation of privacy of donors and prospective donors with respect to the information provided to and/or maintained by the Alumni Foundation. Any non-Alumni Foundation employee with access to the Alumni Foundation information shall be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access.

Section 7 – Collaborative Planning & Activities

In addition to the collaborative efforts and activities described above, the University and the Alumni Foundation agree as follows:

7.1 – Shared Priorities and Goals. By May 31 of each fiscal year, the Alumni Foundation shall, in conjunction with the University, develop annual performance goals which shall account for University-wide private funding priorities for the upcoming fiscal year. These priorities and goals shall consider the strategic needs of the University, as defined by the University, as well as resources, personnel and capacity of the Alumni Foundation.

7.2 – Performance Reports. The University and the Alumni Foundation shall collaborate to provide comprehensive annual reporting of all voluntary, private support given to the Alumni Foundation to benefit the University. The University and its affiliates shall provide the Alumni Foundation, on a quarterly basis, a comprehensive report of unsolicited private support given directly to the University during that quarter.

Section 8 – Other Matters

8.1 – Statement of Coordination. This Agreement is intended to contribute to the coordination of the mutual activities of the University and the Alumni Foundation. To ensure effective achievement of the items of this Agreement, the University and the Alumni Foundation officers, professionals, and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

8.2 – Implied Covenants. By entering into this Agreement, the Parties acknowledge and accept that this Agreement includes the covenant of good faith and fair dealing. Furthermore, the Parties agree that the

responsibilities and duties set forth herein are to be completed in a professional manner and in accordance with applicable professional standards.

8.3 – Winding Up Upon Dissolution. Consistent with the provisions of Bylaws and Articles of Incorporation of the Montana State University Foundation, should the entity cease to exist or cease to be an IRC § 501 (c)(3) organization, it will transfer its assets and property to the University or its assignee. For purposes of this section, a corporate reorganization, merger, or consolidation or a renaming of the Montana State University Foundation shall not constitute a cessation of existence provided to the Montana State University Foundation, or its successor, is recognized as the affiliated Foundation of Montana State University for the purposes outlined in Section 901.9 for the Montana University System Policy and Procedures Manual.

8.4 – Regent’s Approval. This agreement is not effective until approved by the Montana Board of Regents. The parties agree and understand that this agreement will be reviewed and approved by the Board of Regents every two (2) years.

8.5 – Liability Exposure. The parties understand and agree that the liability of the University, its officials and employees, is controlled and limited by the provisions of Title 2, Ch. 9, MCA. Any provisions of this agreement shall be controlled, limited and otherwise modified to limit any liability of the State of Montana and the University to that set forth in the above cited law.

8.6 – Indemnification.

- (a) Each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees, to the full extent required by law.
- (b) Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other upon request.

8.7 – Termination This agreement may be terminated at any time by the mutual written consent of the parties or termination may be invoked by either party upon six (6) months written notice to the other. In the event of termination, the University’s financial obligation shall end six (6) months after the termination notice is received or on the last day of the fiscal year in which termination occurs, whichever is later. In the absence of termination notice, this agreement shall be automatically renewed year to year under the same terms as set forth in this agreement.

The President may withdraw recognition of the Alumni Foundation as the affiliated foundation of Montana State University. The decision to withdraw recognition of the Alumni Foundation may be appealed to the Montana Board of Regents (“BOR”) under Section 203.5.2 of the Montana University System, Policies and Procedures Manual.

This agreement supersedes the previous Memorandum of Understanding entered into by the parties and approved by the Board of Regents in May 2009.

December 8, 2011

The parties have caused this Operating Agreement to be executed by their duly authorized officers as of the date set forth above.

MONTANA STATE UNIVERSITY

MONTANA STATE UNIVERSITY FOUNDATION, INC.

D/B/A Montana State University Alumni
Foundation

By: _____
President

By: _____
President & Chief Executive Officer

Attachment A

Compensation for Services Agreement

The University and the Alumni Foundation, hereby agree that the direct compensation to be paid by the University to the Alumni Foundation for services provided as outlined in Section 5 of the Operating Agreement dated _____ shall be as follows:

Total for FY 2012: \$ 1,200,000

Total for FY 2013: \$ 1,200,000

The University previously pre-paid certain lease amounts for the Alumni Affairs Office. The parties agree that the lease agreement is terminated and that the consideration for the services under this contract is calculated net of the repayment of the unamortized lease amount to the university.

One-fourth (¼) of the annual payment due to the Alumni Foundation will be paid by the University on the first day of each calendar quarter beginning on July 1 of each year.

Signed and agreed to this _____ day of _____, 2011 by:

MONTANA STATE UNIVERSITY

MONTANA STATE UNIVERSITY
FOUNDATION, INC. (d/b/a Montana State
University Alumni Foundation)

By: _____

By: _____

President

President & Chief Executive Officer

Date:

Date:

Attachment B

Compensation for Services Agreement - MontanaPBS

The University and the Alumni Foundation, hereby agree that the services provided to the University on behalf of MontanaPBS shall include the applicable services outlined in Section 5 of the Operating Agreement dated _____, except as follows:

1. MontanaPBS shall retain sole responsibility for its annual fund, membership, and underwriting programs.

MONTANA STATE UNIVERSITY

MONTANA STATE UNIVERSITY
FOUNDATION, INC. (d/b/a Montana State
University Alumni Foundation)

By: _____
President

By: _____
President & Chief Executive Officer