

# Operating Agreement

THIS AGREEMENT, entered into as of this 1<sup>st</sup> day of February, 2011 by and between the Board of Regents of the Montana University System (the "BOR") on behalf of The University of Montana (the "University") and The University of Montana Foundation (the "Foundation"). This Understanding is intended to meet the BOR's requirements as set forth in its Policy 901.9 (Campus-Affiliated Foundations)

## RECITALS

The BOR is responsible for supervising, coordinating, managing and controlling the Montana University System, including overseeing the mission, leadership, and operations of the University. As part of its responsibilities the BOR is responsible for the employment, compensation, and evaluation of all University employees including the president of the University

The Foundation was organized and incorporated in 1951 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University and provide opportunities for students and a margin of institutional excellence unavailable with state funds.

As the official development office for the University, the UM Foundation is responsible for the coordination of all fundraising activities conducted for the benefit of the University. The University adheres to the centralized constituency fundraising model, whereby all philanthropic fundraising activities are coordinated by and through The Foundation.

The Foundation is dedicated to assisting the University in the building of the endowment and in addressing, through philanthropic support, the long-term academic and other priorities of the University as formally articulated to the Foundation from time to time.

As stated in its articles of incorporation, the Foundation is a separately incorporated nonprofit tax exempt organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University, soliciting cash, securities, real and intellectual property, and other private resources for the support of the University and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

Furthermore, in connection with its fund-raising and asset-management activities, the Foundation employs personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities.

This Agreement replaces the Memorandum of Understanding between BOR, the University and the Foundation dated July 1, 2007.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

### **Section 1 Foundation Name, Seal and Logotype**

Consistent with its mission to help to advance the plans and objectives of the University, the Foundation is granted the use of the name The University of Montana Foundation; however, the Foundation will operate under its own seal and logotype and shall not use the University seal or other identifying marks in the promotion of its business and activities.

### **Section 2 The Foundation's Relationship to the University**

The Foundation's board of trustees is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

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

The Foundation is responsible for the employment, compensation, and evaluation of its employees, including the Foundation president and chief executive officer.

The Foundation shall direct all unrestricted gifts received as part of its Annual fund solicitations for use at the direction of the president of the University. All such expenditures must comply with the Internal Revenue Code section 501 (c) (3) code and its regulations, and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audit.

### **Section 3 The University's Relationship to the Foundation**

The University President is responsible for communicating the University's priorities and long-term plans, as approved by the BOR in writing, to the Foundation.

The BOR and the University recognize that the Foundation is a separately incorporated nonprofit tax exempt organization with the authority to keep all records and data confidential consistent with the law.

The President and Chief Executive of the Foundation shall be a member of the University president's Executive Officers and senior administrative team.

The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.

The President of the University shall serve as an ex-officio, non-voting member of the Foundation board and shall assume a prominent role in fund-raising activities.

The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.

## **Section 4 University Responsibilities**

4.1 Fund Raising. At each annual meeting of the Foundation, the President will present to the Foundation Trustees a formal written list of the University's current fundraising priorities. Before embarking in actively fundraising the Foundation will assess the priorities and discuss the fundraising feasibility of each with the President.

The University President, Executive Officers and Academic Officers will work in conjunction with the leadership of the Foundation board and the Foundation President to identify, cultivate, and solicit prospects for private gifts.

4.2 Integrated Advancement. The University will actively coordinate its Alumni Relations and University Relationships activities with those of the Foundation in order to develop a programmatic culture within the University's student, alumni and private support constituencies that effectively encourages increased philanthropy.

4.3 Direct Compensation. In consideration for Foundation services including but not limited to the responsibilities listed in Section 5 (Foundation Responsibilities), the University will provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated on a biennial basis (or more frequently if so agreed by both parties) by the end of March prior to the fiscal year in which the compensation is to be paid. The compensation and payment dates for each of the fiscal years immediately subsequent to the date of this agreement are included as Attachment A.

4.4 Development Officer Cost Sharing. The University shall share, generally on an equal basis, the salary and cost of employment benefits of development officers assigned to serve particular units of the University. The cost sharing arrangement for each such development officer position shall be funded from funds held by the Foundation for use at the discretion of the unit served (or if necessary, the President of the University). The arrangement shall be evidenced by an Development Officer Cost Sharing Memorandum of Understanding in the form included as Attachment B.

4.5 Office Space. The University shall lease adequate office space to the Foundation under the terms of a separately negotiated, fair market Lease Agreement on mutually acceptable terms.

4.6 Information Technology Services. In consideration of Foundation services, the University will also provide the following in-kind support, including but not limited to the following.

The University will support Foundation BANNER, the database application used to contain both (a) the Foundation's donors and prospective donors and (b) the alumni records maintained by the University of Montana Alumni Relations (UMAR). This support includes (1) the hosting of the Banner software components used in the Foundation's instance of BANNER and related data warehouses and datamarts, (2) the hosting and operational support of related web servers and services, (3) provision of the Oracle and general Operating System licenses necessary to host and operate Foundation BANNER and related systems and services, (4) database and system administration services related to the above, including regular database maintenance, data backups, security and recovery related to these databases, and (5) the provision of adequate hardware to operate the Banner Foundation system and related services. All services shall be provided in accordance with generally accepted industry best practices.

The Foundation reserves the right to contract with third-parties for product specific database tuning and other services to augment University provided services.

The University will install annual and periodic Foundation BANNER and supporting Oracle software upgrades in a reasonable timeframe after these upgrades become available.

The University will provide the Foundation network services including operations support and provisioning, including adequate bandwidth, ports and drops.

The University will provide the Foundation with network services including user administration, internet access, use of the University email system, and access to local search engines implemented by the University.

The University will provide access to volume software and equipment purchasing and licensing agreements as contractually permitted.

It is understood that the Foundation may request services in addition to those listed above and that the University may elect to charge the Foundation for those services at a mutually agreed upon rate.

4.7 Alumni Records. The University shall provide the Foundation with timely access to alumni data. This access shall include such data as the Foundation and UMAR find necessary to carry out their missions. This includes but is not limited to alumni name, street address, email address, phone numbers, student numbers, Campus Banner PIDMs, social security numbers, and other contact information, as well as student activity,

degree and employment information. The Foundation shall not release or otherwise use this data for any purpose outside of that expressly outlined in this Agreement.

The University will provide the Foundation with quarterly updates to its alumni records.

The University will periodically survey its alumni in order to improve the quality and quantity of its alumni records.

4.8 Confidentiality. All data related to the Foundation's donors and prospective donors, as well as all data related to any aspect of the Foundation's operations including but not limited to employee records, accounting data, investment records and all management information are the exclusive property of the Foundation. The University shall not share this information with any other party without the express written permission of the Foundation. To the extent permitted by applicable law, the University will support and honor the policies established by the Foundation to protect the privacy and confidentiality of donor and prospective donor records.

## **Section 5 Foundation Responsibilities**

5.1 Fund-Raising. In a coordinated and cooperative effort with the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University, each as established by the University.

The Foundation, working with the University president, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

The Foundation will actively analyze the fundraising priorities presented by the President and assess the feasibility of each new priority. The Foundation, including its Development Officers, will not engage in fundraising for any project not approved by the President.

The University recognizes that the Foundation bears major responsibility for fund-raising. University representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.

The University will use its best efforts to redirect bequests or other gifts made to the University to the Foundation.

The Foundation also manages gifts made directly to the University and other University-related but distinct entities. Such gifts shall be managed as agency funds, that is funds that are not the property of the Foundation.

The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation board of directors and the governmental agency.

The Foundation shall establish and enforce policies to protect donor and prospective donor confidentiality and rights.

The Foundation will provide annually formal training to Deans and Development Officers designed to improve their fundraising skills.

5.2 Fund Stewardship and Administration. The Foundation is the primary depository of private gifts to the University and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements. The Foundation will act to assure the intent of donors is well documented and honored.

The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts.

The Foundation will vet the proposed use of donor provided funds to assure that the use of these funds is in accordance with intent of the donor. In performing this duty the Foundation will rely primarily on the review and endorsement of appropriate University staff. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate documentation.

5.3 Asset Management. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

In managing endowed gifts the Foundation will establish asset-allocation, disbursement, and spending policies that adhere to all current and future applicable federal and state laws including the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as amended or modified from time to time.

5.4 Foundation Funding and Administration. The Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

The Foundation has the right to assess fees for services, or impose gift taxes to support its operations.

Except as outlined in Paragraph 4.2 above, the Foundation, at its own expense, will provide office space (pursuant to the terms of the Lease Agreement referenced in Paragraph 4.3 above), 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.

The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies of its annual report, and other information that may be publicly released.

5.5 Alumni Records. The Foundation recognizes that alumni records belong to the University and shall not release or otherwise use these records for any purpose outside of that expressly outlined in this Agreement.

The Foundation is responsible for the management, security, and organization of all data held in Foundation BANNER including alumni records.

The Foundation will update alumni records held in Foundation Banner quarterly using information provided to the Foundation.

The Foundation shall provide technical and administrative support to the University for UMAR's access and use of Foundation BANNER.

The Foundation shall pay 100% of the annual license fees related to database software (Foundation BANNER) as well as the reporting software (CRYSTAL REPORTS) used in conjunction with the Foundation BANNER datamart. The Foundation shall pay 30% of the annual license fees related to the address verification software (RUNNER TECHNOLOGY) used to improve the quality of alumni and donor addresses stored in the database.

5.6 Alumni Relations Support. The Foundation's development staff shall work with the academic officers of the University as well as the Athletics Director and the Vice President of Student Affairs to not only cultivate private financial support for each assigned University unit (see Paragraph 4.3 above) but will also work to develop and maintain the alumni base for that same unit.

5.7 Other Responsibilities. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements.

The Foundation will maintain and enforce a conflict-of-interest policy, that is a policy intended to protect the Foundation's interest when it is entering into a transaction or arrangement that might benefit the private interest of a Trustee, officer or committee member of the Foundation.

No salary supplement will be provided by the Foundation to the University President without the BOR's approval.

With the explicit approval of the Foundation board, the Foundation may from time to time serve as an instrument for selected activities for the University including but not limited to the purchasing, developing, or managing real estate for University, or University-related expansion.

The Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue with no direct connection to a University purpose.

### **Section 6 Other Matters**

This Agreement is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities. To ensure effective achievement of the items of the agreement, the University and the Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or is no longer a qualified tax exempt organization under Internal Revenue Code 501 (c) (3) organization, the Foundation will transfer its assets and property to the University.

The Recitals are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS Agreement to be executed by their duly authorized offices as of the day and date first above written.

BOARD OF REGENTS OF THE MONTANA  
UNIVERSITY SYSTEM

THE UNIVERSITY OF MONTANA FOUNDATION

\_\_\_\_\_  
President  
The University of Montana

\_\_\_\_\_  
President & Chief Executive Officer  
The University of Montana Foundation

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

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



**Attachment A**

**Operating Agreement Dated February 1, 2011**

**Direct Compensation Agreement per Section 4 (University Responsibilities)**

Further to Section 4.1 of the Agreement of August 1, 2010 between the Board of Regents of the Montana University System on behalf of The University of Montana (the "University") and The University of Montana Foundation (the "Foundation"), the direct compensation to be paid by the University to the Foundation shall be as follows:

<u>Fiscal Year Ending June 30, 2011</u>		<u>Fiscal Year Ending June 30, 2012</u>	
Due on August 1, 2010	\$106,250	Due on July 1, 2011	\$ 106,250
Due of October 1, 2010	106,250	Due of October 1, 2011	106,250
Due on January 1, 2011	106,250	Due on January 1, 2012	106,250
Due on April 1, 2011	106,250	Due on April 1, 2012	106,250
Total for FY 2011	\$425,000	Total for FY 2012	\$425,000

AGREED this day by;

BOARD OF REGENTS OF THE MONTANA  
UNIVERSITY SYSTEM

THE UNIVERSITY OF MONTANA FOUNDATION

\_\_\_\_\_  
President  
The University of Montana

\_\_\_\_\_  
President & Chief Executive Officer  
The University of Montana Foundation

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

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

## Attachment B

### Development Officer Cost Sharing Memorandum of Understanding

The University of Montana Foundation is an independent, non-profit, tax-exempt organization founded and operated for the purposes of soliciting and raising funds for the support of The University of Montana. The Foundation employs qualified fund raising and development personnel to assist with its mission to support the University and will assign qualified employees to be the Director of Development and Alumni Relations (or Director or Officer of Development as appropriate, and herein "Director") for various programs, Departments, Schools or Colleges of the University under the conditions set forth below. In consideration of the foregoing, it is understood and agreed by the Foundation and The University of Montana as follows:

1. The Foundation agrees to assign a qualified Foundation employee to guide, manage, develop and advance the fundraising and outreach efforts of those units on the campus where the President of the University ("President") has determined that a development program is needed and the Foundation has determined that there is a reasonable feasibility of fundraising success.
2. The Director shall at all times be and remain an employee of the Foundation. The Director will report directly to the Foundation, but will also report on a strong dotted report line to the appropriate Dean or campus administrator. Although the Foundation will consult with and consider the appropriate Dean or campus Administrator, the final decision as to who is hired or assigned as the Director will be the responsibility of the Foundation.
3. The Foundation will be responsible for the Director's performance evaluation and other personnel matters, but the Foundation will consult with and give reasonable consideration to the input of the appropriate Dean or campus administrator in the preparation, formulation and approval of the annual plan and related budget.
4. In exchange for the services provided by the Director, the appropriate Dean or campus administrator or President will authorize the use of Foundation funds to pay for one-half ( $\frac{1}{2}$ ) of the Director's salary and benefits for the wage line dedicated to the Director, based on the percentage of the Director's time allocated to the duties hereunder. (For example, if the Director is assigned duties hereunder on a 0.5 FTE basis, authorization will be given to use Foundation funds to pay one-quarter ( $\frac{1}{4}$ ) of the Director's salary and benefits.)
5. In addition, the School, College or Department will pay for travel cost associated with development activities in support of the unit and, if the unit provides an on-campus office for the Director, the unit will provide telephone, supplies and other reasonable office expenses.
6. This Cost Sharing Memorandum of Understand can be terminated with 30 days written notice by either party.

\_\_\_\_\_  
President & CEO  
UM Foundation

\_\_\_\_\_  
President  
The University of Montana

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

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