

## Operating Agreement

### The University of Montana and The University of Montana Foundation

THIS AGREEMENT, entered into as of February 1, 2013 by and between the Board of Regents of the Montana University System (“BOR”) on behalf of The University of Montana (“University”) and The University of Montana Foundation (“Foundation”) 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 mission of the Foundation is to ensure The University of Montana’s excellence, access and affordability through a public/private funding partnership. As stated in its articles of incorporation, the Foundation is a separately incorporated non-profit 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.

The University adheres to the centralized constituency fund-raising model, whereby all philanthropic fund-raising activities are coordinated by and through the Foundation. As the official development office for the University, the Foundation is responsible for the coordination of all fund-raising activities conducted for the benefit of the University. The Foundation is dedicated to assisting the University 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. This Agreement replaces the Operating Agreement between the BOR, the University and the Foundation dated February 1, 2011.

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: UM 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.

The Foundation shall 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 except as expressly allowed by the University.

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

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

The University recognizes that the Foundation is a private and separately incorporated non-profit tax-exempt organization with the authority to keep all records and data confidential to the extent allowed by law. As such, the University shall create, enforce and adhere to policies and procedures that protect the confidential nature of the Foundation's data and records and foster the expectation of privacy attendant to those data and records as allowed by law.

The President and Chief Executive Officer of the Foundation shall be included as a member of the University President's Cabinet of executive administrators. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.

The President, the executive and the academic officers of the University shall assume a prominent role in the fund-raising activities coordinated by the Foundation. The President of the University shall serve as an ex-officio, non-voting member of the Foundation Board of Trustees and shall assume a prominent role in fund-raising activities.

### **Section 3: The UM 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 made to the Foundation consistent with donor intent and according to applicable law.

The 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 ethical guidelines and policies.

The Foundation is responsible for the employment, compensation, and evaluation of its employees, including the President and Chief Executive Officer of the Foundation.

The Foundation shall direct all unrestricted gifts to the University for use at the direction of the the University President. Expenditure of such gifts must comply with the Internal Revenue Code section 501 (c) (3) and its regulations, and be consistent with the Foundation's mission.

The Foundation shall include the University as an active participant in the Foundation's strategic planning.

### **Section 4: University Responsibilities**

**4.1 Fund-raising.** At least annually the President of the University shall present to the Foundation a written list of the University's current private fund-raising priorities. The University shall rely upon the Foundation, or its designee, to assess the priorities and the private funding feasibility of each.

The President of the University and the University's leadership (including, but not limited to its executive administrators and academic officers) shall work in conjunction with the leadership of the Foundation Board and the President and CEO to identify, cultivate, and solicit prospects for private gifts.

The University shall direct to the Foundation any bequests or other gifts made directly to the University.

When requesting distribution of funds, the University shall abide by any terms, conditions, or limitations imposed by the donor or any legal determination on the gift, and shall provide appropriate

documentation with requests. The University bears primary responsibility for review and endorsement of distribution requests.

**4.2 Integrated Advancement.** The University shall actively coordinate its Alumni Relations and University Relations 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 shall provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated and agreed upon on a biennial basis (or more frequently if so agreed by both parties) by the end of January prior to the fiscal year in which the compensation is to be paid. The compensation amounts and payment dates for each of the fiscal years immediately subsequent to the date of this agreement are included as **Appendix A: Direct Compensation Agreement**.

**4.4 Development Officer Cost Sharing.** The University shall share the costs for development officers assigned to serve particular units of the University. The cost-sharing arrangement for each such development officer position shall be funded from gift 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 the form included as **Appendix B: Development Officer Cost-Sharing Agreement**.

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

**4.6 Information Technology Services.** In consideration for Foundation services, the University shall provide in-kind support, including but not limited to the following.

- The University shall support BANNER Advancement, the database application used to contain both (1) the Foundation's donors and prospective donors and (2) the University's alumni records maintained by the University's Office of Alumni Relations (UMAR). This support includes (1) the hosting of the BANNER software components used in BANNER Advancement and related data warehouses and datamarts, (2) the hosting and operational support of related servers and services, (3) provision of the Oracle and general Operating System licenses necessary to host and operate

BANNER Advancement and related systems and services, (4) database and system administration services related to the above, including regular database maintenance, database optimization, data backups, security and recovery related to these databases, and (5) the provision of adequate hardware to operate BANNER Advancement and related databases and 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 shall install annual and periodic BANNER Advancement and supporting Oracle software upgrades in a reasonable timeframe after these upgrades become available.
- The University shall provide the Foundation with rack space for Foundation servers in secure University server hosting facilities, including environmental controls and environmental monitoring with notification, conditioned power, and network connectivity.
- The University shall provide the Foundation network services including operations support and provisioning, including security monitoring, network and internet bandwidth, and sufficient ports and drops to meet Foundation needs for network attached devices including desktops, servers, printers, copiers, and network attached storage.
- The University shall provide the Foundation with network services including user administration and authentication, internet access, use of the University email system, and access to local search engines implemented by the University. The University shall provide authentication services in support of Foundation efforts to implement single sign-on and develop and deploy a portal for information access and sharing by Foundation and University personnel.
- When the University provides virtualized servers for its own units, the University shall provide virtual servers to the Foundation upon request at a rate to be negotiated based upon requirements and costs.
- The University shall provide the Foundation access to training facilities when such use does not conflict with University training schedules.
- The University shall provide access to volume software and equipment purchasing and licensing agreements as contractually permitted.
- The University shall include representatives of the Foundation in the University IT planning and governance processes as appropriate.

- 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.** Alumni records along with Foundation records are held as part of a single dataset known as the Alumni Foundation Database. The purpose, responsibility, ownership, maintenance, access and confidentiality of the Alumni Foundation Database are outlined in the University’s Office of Alumni Relations *Policy on Ownership, Use, Access and Maintenance of the Alumni Foundation Database* (“Alumni Foundation Database Policy”). The University shall not change the Alumni Foundation Database Policy without the written permission of the Foundation.

The University shall provide the Foundation with quarterly updates to its alumni 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 President of the University, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the University’s mission and related to the fundraising priorities established by the University and communicated by the University President per Section 4.1. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

The Foundation, including its Development Officers, shall not engage in fund-raising for any project not approved by the President of the University.

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

**5.2 Fund Stewardship and Administration.** The Foundation is the primary depository of private gifts to the University. The Foundation shall act to ensure the intent of donors is well-documented and honored.

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

The Foundation shall promptly acknowledge and issue receipts for all gifts on behalf of the UM Foundation and the University and provide appropriate recognition and stewardship of such gifts.

The Foundation shall adhere to and periodically assess its gift-management and acceptance policies.

When a distribution of donor-provided funds is requested by the University, the Foundation shall evaluate the proposed use to ensure that the use of these funds is in accordance with the intent of the donor. In performing this duty the Foundation shall rely primarily on the review and endorsement of appropriate University staff. When distributing gift funds to the University, the Foundation shall disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift.

**5.3 Asset Management.** The Foundation shall 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 shall 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 Asset Investment.** When the University deposits funds with the Foundation for investment purposes, the Foundation may commingle those funds with Foundation’s funds and other funds held by the Foundation in a pooled investment portfolio (“Pooled Investments”). In doing so, it is mutually understood that:

- The University retains ownership of University funds;
- The Foundation is authorized to invest the University funds in the same manner as other Foundation funds;
- University funds are subject to the Foundation’s administrative fees in accordance with the Foundation’s Fund Administration Policies;
- University funds may be pooled with the Foundation’s institutional funds and other funds for the purpose of participating in the Pooled Investments;

- There is no trust relationship between the University and the Foundation express or implied;
- Pooled Investments are invested in accordance with the Foundation's investment policy;
- There is an inherent risk involved with investing that is beyond the control of the 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;
- Neither party is obligated to offer or accept investment advice to or from the other party;
- The Foundation has not and does not hold itself out as an investment advisor or as a professional investment corporation; and
- The University representative for all matters relating to the investment of University funds by Foundation is the President of the University or his or her designee.

For all University funds invested by the Foundation, the Foundation shall provide periodic summaries and confirmations of balances of University funds as may be requested or required. The 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 Foundation shall 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.

**5.5 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 impose fees for its services on gifts as well donor provided funds held in support of University needs. While the Foundation's Board of Trustees has latitude to make any changes to the schedule of Foundation fees, the Foundation shall seek University input before making any changes to its fees.

Except as outlined in Sections 4.5 and 4.6, above, and Appendix B, the Foundation shall provide, at its own expense, office space (pursuant to the terms of the lease agreement referenced in Section 4.5 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 provide access to data and records to the University in accordance with the Alumni Foundation Database Policy.

**5.6 Information Technology Services.** The Foundation shall provide technical and administrative support to the University for UMAR's access and use of BANNER Advancement. This support includes:

- The Foundation shall create, maintain, and operate interfaces between Banner Advancement and Alumni systems used for email and direct mail distribution,
- Working with UMAR, the Foundation shall develop and delivery training to staff on Banner use.
- The Foundation shall create custom reports and extracts for UMAR use.
- The Foundation shall create and operate custom data imports for the benefit of UMAR and the University. The Foundation shall pay 100% of the annual license fees related to BANNER Advancement as well as the reporting software (CRYSTAL REPORTS/Business Objects Enterprise server) used in conjunction with the BANNER Advancement data sets.
- The Foundation shall also 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 Alumni Foundation Database.

**5.6 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 the Alumni Foundation Database Policy.

As detailed in the Alumni Foundation Database Policy, the Foundation is responsible for the management, security, and organization of all data held in the Alumni Foundation Database, including alumni records, and all supporting data repositories including data warehouses and data marts.

The Foundation shall update the Alumni Foundation Database using information provided by the University as outlined in Section 4.7.

**5.7 Alumni Relations Support.** The Foundation shall work with the executive and academic officers of the University to develop and maintain the alumni base for each assigned University unit (Section 4.4, above).

**5.8 Other Responsibilities.** The 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 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 engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the University and the BOR with its annual audited financial statements.

The Foundation shall provide the BOR and the University with all other information required under the BOR's *Policy 901.9: Campus-Affiliated Foundations*.

The Foundation Board of Trustees shall 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. No salary supplement shall be provided by the Foundation to the President of the University without the approval of the BOR.

With the explicit approval of the Foundation Board, the 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 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, University and Foundation representatives (including but not limited to respective staff and Foundation Trustees) shall hold periodic meetings to foster and maintain productive relationships and 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 cease to be an Internal Revenue Code 501 (c) (3) organization, the Foundation will transfer its assets and property to the University.

The University and the Foundation may enter into formal arrangements in addition to this Agreement from time to time. No terms or conditions of those agreements will contravene any element of this Agreement.

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 officers as of the day and date above.

BOARD OF REGENTS OF  
THE MONTANA UNIVERSITY SYSTEM

THE UNIVERSITY OF MONTANA  
FOUNDATION

\_\_\_\_\_

President

The University of Montana

\_\_\_\_\_

President and Chief Executive Officer

The University of Montana Foundation

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

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

## **Appendix A: Direct Compensation Agreement**

Further to Section 4.3 of the Agreement of February 1, 2013 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:

### **Fiscal Year Ending June 30, 2014**

Due on August 1, 2013	\$ 125,000
Due on October 1, 2013	125,000
Due on January 1, 2014	125,000
Due on April 1, 2014	125,000
Total for FY 2014	\$ 500,000

### **Fiscal Year Ending June 30, 2015**

Due on August 1, 2014	\$ 125,000
Due on October 1, 2014	125,000
Due on January 1, 2015	125,000
Due on April 1, 2015	125,000
Total for FY 2015	\$ 500,000

## **Appendix B: Development Officer Cost Sharing Agreement**

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 hereafter “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 fund-raising and outreach efforts of those units on the campus where the President of the University has determined that a development program is needed and the Foundation has determined that there is a reasonable feasibility of fund-raising 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 (½) 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 (¼) 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 Agreement can be terminated with 30 days written notice by either party.

