

**OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is made and will be effective the \_\_\_\_ day of \_\_\_\_\_, 2022 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 campus of the Montana University System.
- 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 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, provided that such funds and other resources remain identified in Foundation and University records as University assets;
  - B. Ensure fundraising will be consistent with the stated goals and priorities of the University and that the foundation will not solicit or accept gifts that are inconsistent with such goals and priorities.
  - 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. Provide the University Chancellor regularly, and ongoing opportunities to discuss campus needs, priorities, and other matters with the foundation board and the foundation president/CEO., seek and obtain input from the University (through the Chancellor of the University) before defining priorities for Foundation fundraising efforts;
  - H. With the approval of and public disclosure by the Board of Regents, fund a mutually agreed upon portion of the 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. Strive to have employees and a Foundation Director/President that communicates effectively and regularly with the chancellor and campus leadership and that strive to work cooperatively to advance any requests of the chancellor on priorities for the campus that can lawfully be fulfilled.
  - K. Adhere to its conflict-of-interest policy.

- L. Earmark a portion of its unrestricted funds to a discretionary fund for the chancellor of the university and either transfer a percentage of those funds annually to the institution in compliance with state law and University or reimburse appropriate expenditures. All such expenditures and transfers to comply with the I.R.S. 501 (c)(3) code and be consistent with the Foundation's mission and objectives.
  - M. Control and manage of all assets of the Foundation, including prudent management of all gifts, grants and donations to the Foundation consistent with donor intent.
  - N. Assume responsibility for the performance and oversight of all aspects of its operations based on a comprehensive set of by-laws.
  - O. 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.
  - P. If for any reason the Foundation should dissolve, all assets will be transferred to the University or to the assignee chosen by the University.
  - Q. The foundation will invite input from the Chancellor prior to the appointment of new members to the board of the foundation
  - R. The foundation will follow all other requirements stated or implied by Board of Regents Policy 901.9 as well as all federal and state laws applicable to 501(c)(3) organizations.
2. The University's responsibilities are to:
    - A. Through the Chancellor of the University, seek input from the campus and foundation, before defining the major needs and priorities and 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 to administrative staff as agreed upon by the University and the Foundation and in compliance with all laws and university system policies.
  3. Given that the Executive Director of the Foundation also serves as the University's Alumni Director and share the same database, both parties acknowledge that the Executive Director of the Foundation /Development and Alumni Director, in addition to the afore mentioned responsibilities, will be responsible for the annual fund campaign, building and maintaining a strong alumni affairs program, organizing alumni events and special events of the Foundation and the University, fundraising and other duties assigned by the chancellor.
  4. The Board of Regents and the University recognize that the Foundation maintains it is a private, independent corporation with the authority to keep all records and data confidential consistent within the law.
  5. The Executive Director/President of the Foundation shall be included as a member of the University Council and senior staff.
  6. As 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.
  7. No employee of the Montana University System will hold a voting position within the Foundation.
  8. In performance of this agreement, the parties shall not discriminate on the basis of gender, race, color, religion, marital status, gender identity, sexual orientation, creed, age, political belief, physical or mental disability, national or ethnic origin, ancestry.
  9. All activities and services performed by the Foundation shall be on an independent basis separate from the University. The Foundation while dedicated to serving only the University, will operate as an independent entity, and have the right to control and determine the method and manner of performing its duties hereunder. Nothing herein shall be deemed to create any partnership, joint venture or other formal relationship between the University and the Foundation, which are separate organizations.
  10. The Foundation has the right and authority to elect to hire, evaluate, promote and terminate its own Executive Director/President (the Foundation's chief operating officer to be given one of these titles), its own employees and its own consultants and consulting firms.

11. The University and Foundation may share the cost of salary and benefits of development officers assigned to serve particular units of the University. In such cases the development officer is also considered an employee of the university and the State of Montana and subject to all state, university and Regents rules and policies and state laws. The Foundation reimburses the University for up to 29% of the Executive Director of the Foundation/Development Director/ Alumni Director's salary.
12. The University will not receive any salary supplements for the Chancellor from the Foundation without approval of and public disclosure by the Board of Regents.
13. 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.
14. Upon approval by the Board of Regents, this agreement shall run until January 31, 2024 unless terminated by an agreement in writing and signed by both parties.

Signed as of the Effective Date

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University of Montana Western  
Chancellor

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University of Montana Western  
Foundation Chair