



OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made and will be effective the 1st day of April, 2022 by and between **HELENA COLLEGE UNIVERSITY OF MONTANA** (the "College") and **HELENA COLLEGE FOUNDATION**, an independent Montana non-profit corporation (the "Foundation").

RECITALS:

- A. The College 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 solely to support the mission of the College through private support.
- C. The Montana Board of Regents is responsible for ensuring the integrity and reputation of the College and its programs and must be assured that the independent College 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 College and the Foundation to enter into an operating agreement that outlines their relationship and defines appropriate Foundation activities.
- E. The College 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 College, and with College consent, manage selected College funds and other College 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 College must be accounted for in College accounting records. Ownership of gifts made directly to the College shall be maintained by the College.
 - B. Conduct its fundraising operations in a manner that is consistent with the mission and priorities of the College and 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, including specifically and not by way of limitation, BOR Policy 901.9: Campus-Affiliated Foundations.
 - 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. Provide a copy of the following financial statements to the Board of Regents within 30 days of acceptance by the Foundation's board of trustees.

- Zero to \$149,999 A compilation with full disclosures conducted by an independent CPA
- \$150,000 to \$349,999 A review conducted by an independent CPA within the last 18 months
- Greater than \$350,000 An audit conducted by an independent CPA within the last 18 months

- F. Receive input from the College Dean prior to the appointment of new members to the Foundation.
- G. Maintain and enforce at all times an appropriate conflict of interest policy for directors of the Foundation Board and employees of the Foundation.
- H. Regularly seek and obtain input from the College (through the Dean of the College) about campus needs, priorities, and other matters (through the foundation chief executive officer and board) before defining priorities for Foundation fundraising efforts.
- I. Fund a mutually agreed upon portion of the Foundation Executive Director/President's salary including any such person serving on an interim basis.
- J. Hire employees, including the Executive Director/President, who shall, as a critical part of his or her duties and responsibilities, communicate effectively and regularly with the College Dean to ensure clear understanding of the College Dean's funding priorities, and shall work cooperatively and diligently to advance those priorities, along with periodic requests for the campus made by the Campus Dean, that can lawfully be fulfilled.
- K. Earmark a portion of its unrestricted funds to a discretionary fund for the use of the Dean of the College for appropriate expenditures. All such appropriate expenditures 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 College in compliance with applicable laws, College policies, and gift agreements.
- O. Upon dissolution of the Foundation, all assets will be transferred to the College or to the assignee chosen by the College.
2. The College's responsibilities are to:
- A. The Dean of the College will seek input from the campus and the Foundation before defining major needs and priorities for Foundation consideration;
 - 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 College and the Foundation in compliance with all laws and Montana University System policies.
3. The Board of Regents and the College recognize that the Foundation is a private, independent corporation with the authority to keep all records and data confidential consistent with applicable state and federal laws. However, if a public records request is made of any College official or employee for any information the Foundation deems confidential, even where there is a signed confidentiality agreement with the Foundation, the College will give the Foundation twenty (20) business days' notice of the request so that the Foundation can seek a protective order. If a protective order is not secured and the matter not resolved by the Foundation

with the requestor, the University may release any relevant requested records without any legal liability to the Foundation.

4. The Executive Director/President of the Foundation shall be included as a member of the College Council and senior administrative team.
5. As partial consideration for the services provided by the Foundation to the College under this agreement, the College agrees to pay the Foundation a mutually agreed upon amount each year for its services. As additional consideration for the services provided hereunder the College 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 College. 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 College and to the extent permissible by law, has the right to decide on the hiring, evaluation, promotion of the Foundation Executive Director/President as the Foundation CEO and other Foundation staff, as well as outside contractors and external consultants. Any discipline and termination recommendations shall be made in consultation with the College and subject to the conditions in paragraph 10.
10. The College and the Foundation may share the cost of salary and benefits of all Foundation staff, who shall be considered College 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 College funds. Since these employees are legally College employees, the College will have control over any final salary setting or pay decisions, including raises and bonuses. If the College and Foundation disagree on any potential employee discipline or termination of employment, the College will have the final decision on the matter. The Foundation shall transfer, in a monthly payment to the College, a percentage amount of the Foundation Executive Director/President salary and benefit costs plus an additional lump sum payment amount to be agreed upon by the College and the Foundation for additional Foundation staff salary and benefit costs.
11. No salary supplements for the College Dean will be underwritten by the Foundation without the approval of and public disclosure by the Board of Regents.
12. This agreement is not effective until approved by the Montana Board of Regents. The parties agree and understand this agreement will reviewed and approved by the Board of Regents every two (2) years.
13. Upon approval by the Montana Board of Regents, this Agreement shall be in effect until January 31, 2024 unless terminated by an agreement in writing and signed by both parties.

Signed as of the Effective Date:

Date: _____

Sandra J. Bauman, Dean/CEO, Helena College University of Montana

Date: _____

Greg Strizich, President, Helena College Foundation, Inc.