

OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made and entered into effective as of this _____ day of _____, 2003 by and between **THE UNIVERSITY OF MONTANA** and **THE UNIVERSITY OF MONTANA FOUNDATION**, a Montana non-profit corporation .

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.

NOW, THEREFORE, based on 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, invest, re-invest, administer and manage funds (including both restricted and unrestricted gifts) consistent with the needs of its donors, and to make expenditures to or for the benefit of the University, and with University consent, manage University funds and other University resources to the extent permissible by law, provided that such University funds and other resources remain identified in Foundation and University records as University assets.
 - B. Conduct its fund raising operations in a manner that is consistent with the mission and priorities of the University;

- C. Comply with all applicable state and federal laws;
- D. Accept, account for and receipt all gifts, grants and endowments by preparing and maintaining financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting;
- E. Annually submit audited financial statements and a list of the Foundation's officers and Trustees to the President of the University for submission to the Commissioner of Higher Education and the Board of Regents;
- F. Maintain and enforce at all times an appropriate conflict-of-interest policy;
- G. Seek and obtain input from the University (through the President of the University) before defining the priorities for the Foundation fund raising efforts; and
- H. Underwrite any salary supplement for the President of the University only after approval and public disclosure by the Board of Regents.

2. The University's responsibilities are to:

- A. Provide adequate space and utilities for the Foundation staff and its operations;
- B. Provide to the Foundation staff access to the University's computer staff and facilities on a charge back basis for all actual use of computer or staff time at the standard user rate in effect at the time of use (in this regard a pre-arranged and budgeted amount against charges for computer use may be assessed, with any unused balance reverting to the University at the end of the fiscal year); and
- C. Keep the Foundation appraised (through the President of the University) of the University's needs and priorities.

3. 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 \$278,000 for its services in accordance with the following schedule:

\$69,500	Due July 1, 2003
\$69,500	Due October 1, 2003
\$69,500	Due January 1, 2004
<u>\$69,500</u>	Due April 1, 2004
\$278,000	TOTAL

As additional consideration for the services provided hereunder the University will provide the space and utilities for the Foundation as set forth in Paragraph 2A above.

4. All gifts made to the University shall be accounted for and ownership maintained by the University; all gifts made to the Foundation on behalf of the University shall be accounted for and ownership maintained by the Foundation.

5. No employee of the Montana University System will hold a voting position within the Foundation.

6. To the extent permitted by applicable law, the records of the Foundation will be kept confidential to protect the privacy interests of its donors.

7. In the 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 handicap, national or ethnic origin.

8. All services performed by the Foundation hereunder shall be on an independent contractor basis. The Foundation, as an independent entity, will have the sole right to control and determine the method and manner of performing its duties hereunder. Nothing herein shall be deemed to create any type of partnership, joint venture or any other relationship between the parties other than independent parties contracting on an arm's length basis.

9. This Agreement shall be in effect for the University's 2003-2004 fiscal year unless terminated by an agreement in writing signed by both parties.

Signed as of the Effective Date.

The University of Montana

The University of Montana Foundation

By _____
George M. Dennison
President

By _____
Sharen Peters
President