

**MONTANA STATE UNIVERSITY-BILLINGS**  
**and**  
**MONTANA STATE UNIVERSITY-BILLINGS FOUNDATION**

**OPERATING AGREEMENT for 2003-2004**

**Montana State University-Billings and the Montana State University-Billings Foundation** wish to continue their ongoing relationship under the following terms:

1. The University recognizes the Foundation as separate, independent and private, and agrees the Foundation's continued status as the recognized Foundation of the University shall continue as long as the Foundation complies with the requirements of applicable policies and guidelines of the University as they currently exist and may from time to time be modified and amended.

The University agrees to encourage and maintain the independence of the Foundation and, at the same time, foster a cooperative relationship between the University and the Foundation.

The Chancellor of the University shall be an ex-officio, non-voting member of the Foundation's governing board and committees.

The Foundation agrees to cooperate and consult with the Chancellor and/or the Chancellor's designee(s) in fulfilling its purpose and responsibilities.

2. The Foundation will provide services to Montana State University-Billings during the 2003-2004 fiscal year, including, but not limited to, the following:

- 2a. The Foundation is designated as the central development office of the University and shall solicit private support through annual drives, special projects, special events and comprehensive/capital campaigns as authorized by the Board of Trustees. While the University may accept gifts made directly to the University, absent unique circumstances making a direct gift to the University more appropriate, donors shall be requested to make gifts directly to the Foundation. All gifts received by the University shall be reported to the Foundation to ensure the proper receipting and recording of all gifts to the University in accordance with state and federal tax laws.

The Foundation agrees to coordinate with the Chancellor and/or other appropriate University officers and seek regular and ongoing campus input regarding funding goals, programs, or campaigns proposed by the University.

The Foundation agrees to manage endowments and to transfer funds, both current gifts and income from endowments, to the University in an expeditious manner when requested by the University for expenditure in accordance with the terms and conditions applicable to the particular funds.

The University agrees the Foundation may utilize any unrestricted gifts the Foundation receives to make grants to the University at such times and in such amounts as the Foundation and University deem appropriate. Such unrestricted funds may also be used for the purpose of supporting the development program of the Foundation on behalf of the University, for specific University projects the Chancellor of the University may recommend, or for any purpose consistent with the Foundation's purposes.

The University agrees that annual reviews of the University's use of donated funds will be conducted by the Foundation. The purposes will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors. The scope of the review and extent of testing will be mutually agreed upon in advance by the University and the Foundation.

2b. Alumni Office Administration

The Foundation shall provide administrative coordination and staff support for the Alumni Office and Association. The Foundation shall provide staff time and support to coordinate alumni programs, will maintain demographic records, and will communicate on a regular basis with the University's alumni throughout the state, region and nation.

2c. Scholarship Administration

The Foundation shall administer scholarship funds, and shall solicit, receipt, record, disburse and report said scholarship funds. The Foundation staff will confer with appropriate university personnel on an annual basis to review the scholarship programs.

The Foundation staff will confer with donors concerning criteria and administrative guidelines for the scholarships. Donors will be provided with formal gift acknowledgement letters and receipts, thank-you notes written by respective scholarship recipients, and appropriate student biographical information as well as academic progress reports. When feasible, the Foundation will arrange to have donors meet the scholarship recipients.

2d. Public Relations Administration

The Foundation will provide a positive and ongoing program of public relations on behalf of the University. The Foundation staff will serve on University-related committees at the request of the Chancellor of the University, will assist with campus receptions and other functions, and will coordinate selected faculty and staff recognition programs, including various University Ambassador programs. The Foundation will consider funding requests from the University to further its public

relations activity.

In addition, the Foundation staff, in cooperation with the University Administration, will provide a positive and ongoing program of public relations in the community and region by serving on civic committees and organizations.

2e. National Grant Writing, Fund Raising and Development Activities

The Foundation will support grant writing, fundraising, and development activities at a regional, national, and international level. This includes supporting the University in:

- 1.) Working with sources and agencies available to assist in obtaining federal funding from a variety of areas; and
- 2.) Working with other potential external funding providers (corporations, private foundations, and private parties) to obtain funding support for the University.

2f. Athletic Booster Club

The Foundation agrees to work with the Director of Athletics, the Department of Intercollegiate Athletics, including the Athletics Department Development Staff, and the Athletic Program Booster Organization to coordinate fund raising and raise funds for the Intercollegiate Athletics Program.

3. The Foundation may, in connection with its activities and with prior approval, use the University's name, logos, seal and marks of the University. The Foundation shall not delegate the authority to use the University's name, logos, seal and marks without the written consent of the University.

The Foundation agrees to cease using the University's name and symbols if:

- 1.) The Foundation dissolves;
- 2.) The University's Chancellor withdraws recognition of the Foundation; or,
- 3.) The foundation ceases to be recognized by the Internal Revenue Service as a tax-exempt organization.

The Chancellor's decision to withdraw recognition of the Foundation may be appealed to the Montana Board of Regents under Section 203.5.2 of the Montana University System, Policies and Procedures Manual.

4. The University agrees to provide the following to the Foundation for these services:

4a. Facilities and Services Support

The University agrees to provide the Foundation and the Alumni Association with

office space located at 2615 Virginia Lane. The University will also provide utilities, maintenance, and custodial functions, office equipment services, and other facilities or services as reasonably required and mutually agreed upon by the University and the Foundation.

#### 4b. Operational Support

The University agrees to provide \$627,035 of operational support for the expressed purpose of assisting the Foundation in its fund raising efforts, in addition to the services provided to the University as detailed in this memorandum. These operational funds will be allocated through the Foundation budget and in accordance with the By-Laws of the Foundation.

5. The University and the Foundation agree all funds will be expended in accordance with their respective University and Foundation policies and be supported by vouchers as required by such policies; in adherence to the general charitable purposes of the Foundation; and, in conformance with any restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.
6. The University agrees to obtain campus input before defining the major needs and priorities.
7. The Foundation agrees to maintain financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting, as approved by an independent auditor. Such records shall be audited annually or biannually by a firm of Certified Public Accountants and shall be maintained separately from the records of their affiliated campuses. The University shall have the right of inspection of Foundation records.
8. The Foundation agrees to submit annual or biannual audited financial statements and a list of Foundation officers and trustees, through the Chancellor of MSU-Billings to the Commissioner of Higher Education and Board of Regents. The Commissioner shall make this information available to the executive and legislative branches of state government and members of the public who request it.
9. Because of the privacy interests in the nature of Foundation transactions, all records of the Foundation will be kept confidential, to the extent permitted by law.
10. The Foundation shall comply with all applicable state and federal laws including, but not limited to, Montana workers' compensation laws, Montana unemployment insurance laws, Montana minimum wage laws, and Montana human rights and discrimination laws. In particular, all hiring by the Foundation must be on a basis of merit and qualifications. The Foundation must not discriminate in its hiring procedures on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or

- mental disability, or national origin.
11. The Foundation has a conflict-of-interest policy and adheres to this policy.
  12. No salary supplements for the University Chancellor or other University personnel will be underwritten by the Foundation without prior approval of and public disclosure by the Board of Regents.
  13. The parties understand and agree the liability of the University, its officials and employees, is controlled and limited by the provisions of Title 2, Ch. 9, MCA. Any provision of this agreement shall be controlled, limited and otherwise modified to limit any liability of the State of Montana and Montana State University-Billings to that set forth in the above cited laws.
  14. All requirements stated or implied by the Board of Regents Policy #100-003-R0798 will be followed.
  15. Each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees, to the full extent required by law. Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other party upon request.
  16. This agreement may be terminated at any time by the mutual written consent of the parties or termination may be invoked by either party upon 90 days written notice to the other. In the absence of termination notice, this agreement shall be automatically renewed year to year under the same terms as set forth in this agreement.
  17. If the Foundation's corporate structure is dissolved, the Foundation's Board of Trustees shall dispose of all of the assets of the Corporation in accordance with the terms of its Articles of Incorporation and By-laws. Any assets not so disposed of shall be disposed of by the State District Court in Yellowstone County to Montana State University-Billings.
  18. This agreement may be modified by written amendment signed by both parties.

The following persons being duly authorized to sign this agreement and bind the above named parties, do hereby affix their signatures on the date shown.

Date:

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Bruce Parker, Chairperson  
Montana State University-Billings  
Foundation

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Ronald P. Sexton, PhD  
Chancellor  
Montana State University-Billings

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Marilynn Miller, President and CEO  
Montana State University-Billings  
Foundation

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Terrie Iverson  
Administrative Vice Chancellor  
Montana State University-Billings