

ITEM 127-132-R0505

**MONTANA STATE UNIVERSITY NORTHERN
AND
MONTANA STATE UNIVERSITY NORTHERN FOUNDATION, INC.
OPERATING AGREEMENT**

This agreement is entered into by Montana State University Northern ["University" or "MSUN"] and the Montana State University Northern Foundation, Inc. ["Foundation"] this 1st day of July, 2004.

RECITALS

1. The University is an institution of higher education and a unit of the Montana University System;
2. The Foundation is a private, non-profit corporation organized under the laws of the state of Montana to promote and enhance the University's programs of instruction, research and public service. The Foundation is recognized by the Internal Revenue Service as having tax exempt status under Section 501(c)(3) of the Internal Revenue Code.
3. The Foundation is an independent corporation whose relationship to the University is governed by its Articles of Incorporation, By-laws and this agreement.
4. The University has officially recognized the Foundation as its affiliated foundation for the purposes outlined in Section 901.9 of the Montana University System, Policy and Procedures Manual.
5. The parties desire to enter into this agreement to formalize their relationship and to establish their relative responsibilities.

Based upon the above recitals and the mutual agreements contained in this agreement, the parties agree as follows:

I. *Foundation Purposes and Responsibilities:*

A. The purposes of the Foundation are outlined in its Articles of Incorporation, By-laws and its Mission Statement. The Mission Statement is attached hereto as Appendix A. The Foundation has adopted such policies, plans and budgets as are necessary to achieve its mission.

B. In fulfilling its stated purposes, the Foundation will:

- 1) Raise, receive, invest, manage and administer funds to benefit the University in support of its educational, research and service missions and other lawful purposes of the University.
- 2) Administer gifts, including soliciting, recording and acknowledging gifts made to the Foundation or in response to a Foundation campaign and maintaining records of gifts, grant receipts and expenditures of gifts.

- 3) Coordinate all fund raising efforts in support of the University, including development and maintenance of alumni and donor data base information, subject to the priorities established by the University and the Foundation governing board.
- 4) Conduct specific development campaigns to respond to the stated priorities of the University.
- 5) Provide counsel and consultation on development activities to promote the University in general.
- 6) Hold, manage and invest its endowment funds for the benefit of the university in accordance with Foundation policies and procedures. The Foundation is authorized to charge its usual administrative fee on these funds and will account for these funds in accordance with generally accepted accounting principles.
- 7) At the request of the University, hold, manage and invest the University's endowment funds for the benefit of the University in accordance with Foundation policies, procedures and fees.
- 8) Perform other acts as may be deemed appropriate in carrying out the purposes of the University.

C. In fulfilling its responsibilities under the agreement, the Foundation agrees that it will:

- 1) Comply with applicable state and federal law and its own policies and procedures.
- 2) Maintain financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting. Such records shall be maintained by the Foundation and audited no less than biannually by a firm of Certified Public Accountants.
- 3) Accept gifts in accordance with its Gift Acceptance Policy and the terms and conditions of this Agreement. The parties agree that gifts made to the Foundation or in response to a Foundation campaign will be accounted for and owned by the Foundation. Gifts made to the University will be accounted for and owned by the University.
- 4) Maintain its conflict of interest policy for board members and staff.
- 5) Seek campus input before defining the major needs and priorities of its fundraising efforts.
- 6) Follow the requirements of the Campus Affiliated Foundations Policy, Section 901.9, Montana University System Policies and Procedures Manual.

II. *Relationship Between Foundation and University.*

- A. The University agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the University and the Foundation.
- B. The Chancellor of the University shall be an ex-officio member of the Foundation's governing board and committees.
- C. The Foundation agrees to cooperate with the Chancellor and/or the Chancellor's designee in fulfilling its purpose and responsibilities.
- D. The relationship between the Foundation and the University shall be further defined by the University/Foundation Service's Agreement. Said Agreement is incorporated herein by reference as if fully set forth herein. (Appendix A)

III. *Foundation's Obligations to the University.*

- A. The Foundation may accept gifts with restrictive terms and conditions or gifts of real estate. However, the Foundation will advise donors that a restricted gift in support of the University may not be accepted without University and Foundation approval.
- B. The Foundation agrees to coordinate with the Chancellor or other appropriate University officers and seek campus input regarding funding goals, programs, or campaigns proposed by the University.
- C. The Foundation shall provide the University Chancellor with copies of its most recent audited financial statement and a list of foundation officers and board members annually. The parties understand this information will be submitted to the Commissioner of Higher Education and the Board of Regents and will be made available to the public upon request.
- D. The Foundation agrees not use its funds to supplement the salary of any University employee unless approved in writing by the University and subject to such approval of the Board of Regents as may be required under Section 901.9, Montana University System, Policy and Procedures Manual.

IV. *University Assistance.*

- A. The University, through the direction of the Chancellor, shall consult with the Foundation regarding the University's needs and the specific development campaigns the university desires the Foundation to conduct.
- B. The University agrees to provide Foundation with access to University telecommunications lines and facilities, including the University computer system. The Foundation will pay for University telecommunications lines and facilities at standard University user rates.

V. *Use of University Name.*

- A. The Foundation may, in connection with its activities, 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, seal, logos, and marks of the University without the written consent of the University.

- B. Foundation agrees to cease using Institution's name and symbols if:
- 1) The Foundation dissolves;
 - 2) The University's chancellor withdraws recognition of the Foundation; or,
 - 3) Foundation ceases to be recognized by the Internal Revenue Service as 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.

VI. *Access to Records.*

Financial records of donors are confidential and will not be released or accessed by the public unless required by law. The Foundation agrees to provide the legislative auditor access to records as may be necessary to comply with the requirements of Section 18-1-118 (2), MCA.

VII. *Liability Exposure.*

The parties understand and agree that the liability of the University, its officials and employees, is controlled and limited by the provisions of Title 2, Ch. 9, MCA. Any provisions of this agreement shall be controlled, limited and otherwise modified to limit any liability of the State of Montana and MSUN to that set forth in the above cited laws.

VIII. *Indemnification.*

A. 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.

B. 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.

IX. *Termination.*

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.

X. *Dissolution.*

If the Foundation's corporate structure is dissolved, the Foundation Board of Trustees shall dispose of all 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 Hill County, to Montana State University Northern.

XI. *Modification.*

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 our signature on the date shown

MSUN FOUNDATION:

**MONTANA STATE
UNIVERSITY - NORTHERN:**

By: /s/ Brian Lilletvedt

By: /s/ Alex Capdeville

Title: President

Title: Chancellor

Date: 6/15/04

Date: 6/15/04