

**OPERATING AGREEMENT**

This OPERATING AGREEMENT (“Agreement”), entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2005, is by and between Montana Tech of The University of Montana (“Tech”), and the Montana Tech Foundation.

**RECITALS:**

WHEREAS, Tech is a public institution of higher learning and a campus of The Montana University System; and

WHEREAS, Foundation is a non-profit corporation under the laws of the State of Montana, and is a corporation described in Section 501 (c) (3) of the U.S. Internal Revenue Code; and

WHEREAS, the primary purpose of Foundation is the support and benefit of Tech, and matters and activities reasonably and properly related thereto, consistent with the mission and priorities of Tech; and

WHEREAS, the parties desire to enter into this Agreement defining the relationship between the parties;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, the parties agree as follows:

1. Vice Chancellor for Advancement and Development

Tech will employ, as a State of Montana employee, a Vice Chancellor for Advancement and Development (VCAD) who also serves as President of the Foundation. The VCAD will report to the Chancellor of Tech for all development and advancement activities. The VCAD will be responsible to the Board of Directors of the Foundation for all Foundation activities. For the first two years of this agreement, the Foundation agrees to pay the full salary and benefits of the VCAD and thereafter to pay a portion of the salary and benefits as negotiated between Tech and the Foundation. The Chancellor of Tech and the Chair of the Board of Directors of the Foundation will appoint a search committee that will screen applicants and make a recommendation of acceptable candidates from which the Chancellor of Tech and the Chair of the Board of Directors of the Foundation will appoint the VCAD. Should it become necessary to remove the VCAD from office, the action will be taken jointly by the Chancellor of Tech and the Chair of the Board of Directors of the Foundation following the policies of the Board of Regents. If agreement cannot be reached, the Foundation may choose to withdraw financial support for this position.

2. Foundation's responsibilities as administered by President of the Foundation are to:
  - A. Solicit, receive, hold, invest, re-invest, administer and manage funds (including both restricted and unrestricted gifts) consistent with the needs and requirements of its donors, and make expenditures to or for the benefit of Tech;
  - B. With Tech's consent, manage Tech funds and other Tech resources to the extent permissible by law, provided that such Tech funds and other resources remain identified in Foundation and Tech records as Tech assets;
  - C. Conduct its fund raising operations in a manner that is consistent with the mission and priorities of Tech;
  - D. Comply with all applicable state and federal laws;
  - E. Accept and account and receipt for 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, as approved by an independent auditor;
  - F. Annually submit audited financial statements and a list of the Foundation's officers and directors to Tech's Chancellor;
  - G. Have a conflict-of-interest policy;
  - H. Seek and obtain input from Tech, through its Chancellor, before defining the priorities for Foundation fund raising efforts;
  - I. Underwrite no salary supplement for the Chancellor of Tech without approval and public disclosure by the Board of Regents.
3. Tech's responsibilities as administered by the Vice Chancellor are to:
  - A. Provide utilities, maintenance functions, office and computer equipment and services, and other facilities and services as reasonably required;
  - B. Keep Foundation apprised, through the Chancellor, of Tech's needs and priorities.
4. When requested by the Associations, and mutually agreeable by Tech, Foundation shall manage, administer and disburse funds of the Digger Athletic Association, and the Alumni Association, and provide other services or assistance as mutually agreed upon. For these services, the Digger Athletic Association and the Alumni

Association shall pay Foundation the reasonable actual costs incurred by Foundation, as determined by Foundation.

5. When mutually agreed upon, Foundation shall make available to the Chancellor of Tech a Chancellor's Support Fund, in such amount and for such purposes as shall be mutually agreed upon. A sufficient time before adoption of the Foundation annual budget, the Chancellor shall submit to the Foundation the Chancellor's request, specifying the requested amount and purposes of the fund.
6. Any and all restrictions placed on funds and assets, and/or upon income therefrom, shall be strictly observed, in accordance with the expressed intent of the donor.
7. In consideration for additional services not specified in this Agreement, which may be performed from time to time by Foundation at Tech's request, Tech shall transfer funds to Foundation at such times and in such amounts as may be mutually agreed upon. Such funds shall be budgeted by both parties on an annual basis, and shall be agreed upon on a timely basis to accommodate the budgeting schedule of each of the parties.
8.
  - A. All gifts made to Tech shall be accounted for and ownership maintained by Tech; provided, however, that nothing in this Agreement shall be deemed to prevent Tech from disposing of part or all of any such gift items or funds whenever deemed appropriate by Tech.
  - B. All gifts made to Foundation on behalf of Tech shall be accounted for and ownership maintained by Foundation; provided, however, that nothing in this Agreement shall be deemed to prevent Foundation from transferring part or all of any such gift items or funds to Tech, or from disposing of part or all of any such gift items or funds, whenever deemed appropriate by Foundation.
9. No employee of the Montana University System will hold a voting position within the Foundation.
10. To the extent permitted by applicable law, the records of Foundation will be kept confidential to protect the privacy interests of its donors.
11. 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, or national or ethnic origin.
12. The relationship of Foundation to Tech under this Agreement shall be that of independent contractor. Foundation, as an independent entity, will have the right to control and determine the method and manner of performing its duties hereunder. Tech's interest is in the results to be achieved. Nothing herein shall be deemed to create any type of partnership, joint venture, agency or any other relationship between the parties other than independent parties contracting on an arm's length basis.

13. The Foundation may, in connection with its activities, use Montana Tech's name, seal, logos, and marks. The Foundation shall not delegate the authority to use Montana Tech's name, seal, logos, and marks without the written consent of Montana Tech. The Foundation agrees to cease using Montana Tech's name and symbols if: 1) the Foundation dissolves; 2) Montana Tech'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.
14. This Agreement shall remain in full force and effect until terminated by either of the parties hereto. Either party may terminate this Agreement by giving the other party notice in writing at least thirty (30) days prior to the date of termination.
15. Any notice to be given to either party hereunder shall be deemed complete when sent by registered or certified mail, return receipt requested, or when served personally upon an officer of the party to be notified.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officer or officers as of the day and year first above written.

MONTANA TECH OF THE UNIVERSITY  
OF MONTANA

By \_\_\_\_\_

MONTANA TECH FOUNDATION

By \_\_\_\_\_