



Operating Agreement

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2022 by and between Montana State University – Northern (“University”) and the Montana State University - Northern Foundation (“Foundation”). This Agreement is intended to meet the requirements as set forth in its Policy 901.9 (Campus-Affiliated Foundations of the Board of Regents Policy and Procedures).

RECITALS

1. Montana State University-Northern is an institution of higher education and a campus of the Montana University System.

2. The Foundation (d.b.a. Northern Alumni Foundation) is an independent, incorporated, nonprofit, tax exempt organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities. The Foundation is governed by a Board of Trustees with the mission of engaging alumni and friends of the University, enrich student experiences and providing ethical stewardship while supporting the University’s plans, priorities, objectives, and strategic goals through fundraising events and activities.

3. The University has officially recognized the Montana State University-Northern Foundation as its affiliated Foundation for the purposes outlined in Section 901.9 of the Montana Board of Regents Policy and Procedures Manual.

In consideration of the mutual commitments herein contained, the Parties agree as follows:

Section 1 University Name, Seal and Logotype

Consistent with its mission to help to advance the plans, priorities, objectives, and strategic goals of the University, the Foundation is granted the use of the name “Montana State University – Northern” and the use of the University’s logo solely for fulfillment of its duties under this agreement, according to the University’s branding guidelines. The Foundation shall

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not use the name and logo for commercial purposes except in compliance with University contracts and upon written permission from the Chancellor. The Foundation may use the name and logo until such time as the Foundation dissolves, ceases to be recognized as a tax-exempt organization, or recognition of the Foundation is withdrawn by Montana State University's President. The decision to withdraw recognition of the Foundation may be appealed to the Montana Board of Regents ("BOR") under Section 203.5.2 of the Montana University System, Policies and Procedures Manual.

Section 2 The Foundation's Relationship to the University

The Foundation's Board of Trustees ("Board") is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent and according to all applicable laws.

The Foundation is responsible for the performance and oversight of all aspects of its operations based on its bylaws that address the Board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

The Board is responsible for the employment, compensation, and evaluation of the Foundation's Chief Executive Officer ("CEO"). The CEO is responsible for the employment, compensation, and evaluation of the Foundation's employees.

The Foundation shall support the University through the services outlined in Section 5, unless the parties agree otherwise and when modified by a written agreement signed by both parties.

The Foundation is responsible for meeting targeted fundraising goals set annually by the Board as agreed upon by the Chancellor and CEO.

The Foundation shall receive input from the Chancellor prior to the appointment of new members to the Foundation Board of Trustee.

Section 3 The University's Relationship to the Foundation

The Chancellor is responsible for communicating the University's plans, priorities, objectives, and strategic goals to the Foundation as they are defined or revised. The Chancellor will also communicate priorities for Foundation events, as determined by University plans, priorities, objectives, and strategic goals. The Foundation will provide the Chancellor an opportunity to discuss campus needs and priorities and other matters with the Foundation Board on a quarterly basis. The CEO will meet with the Chancellor at least every other week or as needed, as determined by all parties.

The University has officially recognized the Foundation as its affiliated Foundation for the purposes outlined in Section 901.9 of the Montana Board of Regents Policy and Procedures

Manual.

The University recognizes that the Foundation is a private, non-profit corporation with the authority to keep all records and data confidential to the extent allowed by law. As such, the University will adhere to policies and procedures that protect the confidential nature of the Foundation's data and foster the individual reasonable expectation of privacy attendant to that data as allowed by law.

The CEO shall be a member of the Core Leadership Team and will attend weekly Core Leadership Meetings, when possible, to provide updates and reports of the Foundation's activities and events. It is expected the CEO will participate in strategic planning for the University.

The Chancellor of the University shall serve as ex-officio, non-voting member of the Board and shall assume a prominent role in fundraising activities.

Section 4 University Responsibilities. The University agrees to provide the following:

4.1 Funding Priorities. The Chancellor will communicate to the Foundation and Board a list of the University's current fundraising during the spring semester. The Chancellor will discuss fundraising feasibility with the CEO and Board Chair.

The Chancellor will work in conjunction with the CEO and Board to identify, cultivate, and solicit prospects for private gifts.

4.2 Integrated Advancement. The University will actively coordinate with the Foundation to develop a programmatic culture within the University's student, alumni, and private support constituencies that effectively encourages increased philanthropy.

4.3 Consideration. In consideration for Foundation services, including but not limited to the responsibilities listed in Section 5 (Foundation Responsibilities), the University will provide the Foundation with a fair and reasonable payment for services as negotiated by the parties. The consideration for this contract term is included as Attachment A.

4.4 Office Space. The University shall provide office space to the Foundation and will waive rent as part of the consideration for the services performed under this agreement.

The University will provide the Foundation with network services including user administration, internet access, and use of the University email system, as implemented by the University.

At times, the University may provide other mutually agreeable technology services (e.g., third-party software, information systems, etc.) or University departmental support (e.g., printing, marketing, etc.). These services require a separate agreement, signed by both parties, that defines expectations for the length and scope of work needed.

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4.5 Provision of Data. When allowed by law, the University shall provide to the Foundation reasonable data requested by the Foundation for the maintenance and support of the Foundation's efforts under this agreement.

4.6 Alumni Records. The University shall provide the Foundation with timely access to alumni data. This access shall include such data as the Foundation finds necessary to carry out its mission. This includes but is not limited to alumni name, street address, email address, phone numbers, and other contact information, as well as student activity, degree and employment information. The Foundation shall not release or otherwise use this data for any purpose outside of that expressly outlined in this Agreement. The Foundation will execute and comply with the FERPA requirements as set forth in the Data Security Agreement attached as Attachment B.

The University will provide recent graduate information in a timely manner following commencement each semester, ideally prior to the next commencement. The University will periodically survey its alumni in order to improve alumni records and relationships.

4.7 Confidentiality. All data related to the Foundation's donors and prospective donors, as well as all data related to any aspect of the Foundation's operations including but not limited to employee records, accounting data, investment records and all management information are the exclusive property of the Foundation. The University shall not share this information with any other party without the express written permission of the Foundation. To the extent permitted by applicable law, the University will support and honor the policies established by the Foundation to protect the privacy and confidentiality of donor and prospective donor records.

4.8 Policies. The Chancellor and University Executive team are expected to be familiar with the Foundation Bylaws, Gift Policies and other policies that govern the Foundation.

Section 5 Foundation Responsibilities. The Foundation will provide the following services to the University.

5.1 Alumni Relations and Association. In cooperation with the University, the Foundation shall be responsible for various programs, services, and initiatives to strategically enhance and expand alumni engagement with the University ("alumni relations").

5.2 Donor Relations. In cooperation with the University, the Foundation shall be responsible for various programs, services, and initiatives to strategically enhance and expand donor engagement with and private support for the University ("donor relations").

5.3 Fundraising. In cooperation with the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.

The Foundation, working with the Chancellor, is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns, as appropriate.

The Foundation will analyze fundraising priorities presented by the Chancellor and assess the feasibility of each new priority. The Foundation will not engage in fundraising for any project not approved by the Chancellor.

5.4 Fund Stewardship and Asset Management. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments. The Foundation also manages gifts made directly to the University. Such gifts shall be managed as funds that are not the property of the Foundation.

The Foundation is the primary depository for private gifts to the University. The Foundation will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements. The Foundation will vet the proposed use of donor provided funds to assure that the use of these funds is in accordance with the intent of the donor. In performing this duty, the Foundation will rely primarily on the review and endorsement of appropriate University staff. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate documentation.

In managing gifts the Foundation will establish asset-allocation, disbursement and spending policies that adhere to all current and future applicable federal and state, including the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as amended or modified from time to time.

The Foundation shall provide periodic summaries and confirmations of balances of University funds as may be requested or required. Additionally, the Foundation shall provide the University with a copy of the most recent Investment Policy.

5.5 Event Services. The Foundation shall host events in support of Foundation and University alumni and donor relation programs annually, and at the request of the Chancellor or his/her designee.

5.6 Communications Services. The Foundation shall provide constituent-related communications services to the University upon request and when related to the Foundation's efforts and activities. The Foundation shall provide preferential attention to communications on behalf of the Chancellor.

5.7 Donor Confidentiality. The Foundation shall establish and enforce policies to protect donor and prospective donor confidentiality and rights.

5.8 Gift Acceptance and Acknowledgment. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts. If assets are received by the University in lieu of the Foundation, the Foundation will provide appropriate recognition for such gifts when properly notified by the University.

5.9 Accounting Principles. The Foundation will maintain financial and accounting records in accordance with generally accepted accounting principles or other comprehensive Basis of Accounting, as approved by an independent auditor.

5.10 Foundation Funding and Administration. The Foundation is responsible for establishing a financial plan to pay the cost of Foundation programs, operations, and services. In addition to the consideration for the services provided under this agreement, the Foundation has the right to impose reasonable fee assessments on funds established with the Foundation to support its programs.

The Foundation will provide reimbursement to the University for telephone systems used by the Foundation. The Foundation, at its own expense, will provide for adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

5.11 Alumni Records. The Foundation recognizes that alumni records belong to the University and shall not release or otherwise use these records for any purpose outside of that expressly outlined in this Agreement. The Foundation is responsible for the management, security, and organization of all data held in Blackbaud Raiser's Edge, including alumni records. The Foundation will update alumni records held in Blackbaud Raiser's Edge using information provided to the Foundation. The Foundation shall pay 100% of the annual license fees related to database software (Blackbaud Raiser's Edge) as well as the reporting software used in conjunction with the Blackbaud Raiser's Edge.

5.12 Reporting Requirements. Within 60 days of the close of the Foundation's fiscal year, the Foundation will submit a report to the affiliated campus and the BOR providing information from the most recent year that addresses (a) the financial benefits to and related expenses of the affiliated campus, (b) the investment management results achieved by the foundation related to its endowment portfolio, and (c) performance metrics related to responsibilities cited in the operating agreement.

Within 30 days of acceptance by the Board of Trustees, the Foundation will provide a copy of its annual financial statement as audited by an independent accounting firm to the campus and BOR.

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Within 30 days of filing with the Internal Revenue Service, the Foundation will provide a copy of Form 990 as filed with the Internal Revenue Service for the fiscal year to the campus and BOR.

As required by GASB 39, campuses with affiliated foundations shall include financial information from audited financial statements in the annual campus financial reporting.

5.13 Other Responsibilities. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements.

The Foundation will maintain and enforce a conflict-of-interest policy, that is a policy intended to protect the Foundation's interest when it is entering into a transaction or arrangement that might benefit the private interest of a Trustee, officer, or committee member or employee of the Foundation.

No salary supplement for the Chancellor will be underwritten by the Foundation without the approval of and public disclosure by the Board of Regents.

The Foundation will maintain compliance with Campus Affiliated Foundations Policy, Section 901.9, Montana Board of Regents Policies and Procedures Manual as well as all federal and state laws applicable to 501(c)(3) organizations.

Section 6 Confidentiality and Access to Information

6.1 Public Information. The Foundation will provide copies or provide access to all public documents including:

- (a) Policies and procedures documentation, including:
 - i. Gift Acceptance Policy,
 - ii. Investment Policies.
- (b) Organizational documents, including articles of incorporation and corporate bylaws;
- (c) Audited financial statements;
- (d) Form 990, Return of Organization Exempt from Income Tax.

6.2 Confidential Information. The parties agree that confidential information which is not available for public inspection includes, but is not limited to, the following:

- (a) Information relating to donors and prospective donors:
 - i. Contact information including, but not limited to, addresses, phone numbers, and email addresses;
 - ii. Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning or gift planning matters;

- iii. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge;
 - iv. Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge;
 - v. Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor;
 - vi. Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This does not apply to a gift or pledge from a publicly held business corporation;
- (b) Information relating to fundraising plans and strategies;
 - (c) Trade secret information and information relating to the business of any the Foundation subsidiary which, if released, could create a competitive disadvantage;
 - (d) Individual employee information other than name, title and salary;
 - (e) Individual student information not otherwise exempted;
 - (f) Information relating to trusts and annuities administered by the Foundation, except as to actual gifts to the Foundation from such a trust or annuity; and
 - (g) Other information protected by law.

When necessary or beneficial to the efficient execution of the Foundation activities, the Foundation may provide access to the Foundation data and records to select University personnel on a limited, need-to-know basis in accordance with applicable laws and the Foundation policies and guidelines. Providing such access shall not negate the confidential nature of the information and records or the classification of such information and records as trade secrets. Additionally, providing such access does not undermine the reasonable expectation of privacy of donors and prospective donors with respect to the information provided to and/or maintained by the Foundation. Anyone other than a Foundation employee with access to the Foundation information shall be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access.

Section 7 - Collaborative Planning & Activities

In addition to the collaborative efforts and activities described above, the Parties agree as follows:

7.1- Shared Priorities and Goals. By May 31st of each fiscal year, the Foundation shall, in conjunction with the University, develop annual performance goals which shall account for University-wide funding priorities for the upcoming fiscal year. These performance goals will align with University plans, priorities, objectives, and strategic goals, and will considers resources, personnel and capacity of the Foundation.

7.2 - Collaborative Reports. The Parties shall collaborate to provide comprehensive annual reporting of all voluntary and private support given to the Foundation to benefit the University. The University and its affiliates shall provide the Foundation, on a quarterly basis, a comprehensive report of unsolicited private support given directly to the University and its affiliates during that quarter.

Section 8 Other Matters

8.1 Winding Up Upon Dissolution. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an IRC § 501 (c)(3) organization, it will transfer its assets and property to the University, or the University's assignee. For purposes of this section, a corporate reorganization, merger, or consolidation or a renaming of the Foundation shall not constitute a cessation of existence provided to the Foundation, or its successor, if recognized as the affiliated Foundation of Montana State University-Northern for the purposes outlined in Section 901.9 for the Montana University System Policy and Procedures Manual.

8.2 Regent's Approval. This agreement is not effective until approved by the Montana Board of Regents. The parties agree and understand that this agreement will be reviewed and approved by the Board of Regents every two (2) years, with this agreement to run through January 31, 2024.

8.3 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 the University to that set forth in the above cited law.

8.4 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 upon request

8.5 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 six (6) months written notice to the other. In the event of termination, the University's financial obligation shall end six (6) months after the termination notice is received or on the last day of the fiscal year in which termination occurs, whichever is later. 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.

The parties have caused this Operating Agreement to be executed by their duly authorized representatives.

**MONTANA STATE
UNIVERSITY NORTHERN**

**MONTANA STATE UNIVERSITY-NORTHERN
FOUNDATION**

Chancellor

Chief Executive Officer

Date: _____

Date: _____

Chair of the Board

Date: _____

Attachment A
Development Services Compensation Agreement

The University and the Foundation, hereby agree that the direct compensation to be paid by the University to the Foundation for services provided as outlined in Section 5 of Operating Agreement shall be as follows:

Total for CY 2022 \$ 182,204.00

Total for CY 2023 \$ 182,204.00

Payments shall be made as follows:

\$ 15,183.65 Monthly

Signed and agreed to this 1st day of February, 2022, by:

**MONTANA STATE
UNIVERSITY NORTHERN**

**MONTANA STATE UNIVERSITY-NORTHERN
FOUNDATION**

Chancellor

Chief Executive Officer

Chair of the Board

Attachment B

Data Security Agreement between Montana State University-Northern and Montana State University-Northern Foundation (“Service Provider”)

Protection of Confidential Data

Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the Montana University System (Institution) may use the information, but only for the purposes for which the disclosure was made.

Definition: Covered data and information (CDI) includes paper and electronic student education record information supplied by Institution, as well as any data provided by Institution’s students to the Service Provider.

Acknowledgment of Access to CDI: Service Provider acknowledges that the Agreement allows the Service Provider access to CDI.

Prohibition on Unauthorized Use or Disclosure of CDI: Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of Institution (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

Return or Destruction of CDI: Upon termination, cancellation, expiration or other conclusion of the Agreement, Service Provider shall return all CDI to Institution or, if return is not feasible, destroy any and all CDI. If the Service Provider destroys the information, the Service Provider shall provide Institution with a certificate confirming the date of destruction of the data.

Remedies: If Institution reasonably determines in good faith that Service Provider has materially breached any of its obligations under this contract, Institution, in its sole discretion, shall have the right to require Service Provider to submit to a plan of monitoring and reporting; provide Service Provider with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, Institution shall provide written notice to Service Provider describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from Institution’s education records, Institution may not allow the Service Provider access to education records for at least five years.

Maintenance of the Security of Electronic Information: Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of Institution or its students. These measures will be extended by contract to all subcontractors used by Service Provider.

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall, within one day of discovery, report to Institution any use or disclosure of CDI not authorized by this agreement or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

Indemnity: Service Provider shall defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this agreement.