

**OPERATING AGREEMENT BETWEEN  
BITTERROOT VALLEY COMMUNITY COLLEGE AND  
BITTERROOT VALLEY COMMUNITY COLLEGE FOUNDATION**

THIS AGREEMENT (“Agreement”), entered into this 15th day of December, 2022, is by and between Bitterroot Valley Community College and Bitterroot Valley Community College Foundation and is valid through June 30, 2024.

**RECITALS**

WHEREAS, Bitterroot Valley Community College (“BVCC”) is a public community college, legally known as the Community College District of the Bitterroot Valley, Montana; and

WHEREAS, Bitterroot Valley Community College Foundation (“Foundation”) is a separately incorporated tax-exempt entity, registered with the State of Montana as a public benefit corporation; and

WHEREAS, the Foundation exists to solicit, receive, manage, and disburse funds to advance the mission and goals of BVCC; promote community awareness of the needs of BVCC; and engage the community in the activities of BVCC; and

WHEREAS, BVCC recognizes the Foundation as its sole affiliated foundation for the purposes outlined in BVCC Board Policy 6055.

**TERMS OF AGREEMENT**

NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, BVCC and the Foundation (“Parties”) agree as follows:

**Section 1 – BVCC Name, Seal, and Logotype**

Consistent with its mission to help advance the mission and goals of BVCC, the Foundation is granted the use of the name Bitterroot Valley Community College and is granted the use of BVCC’s logo under BVCC’s applicable graphic identity and branding policy until such time as the Foundation dissolves, the Foundation ceases to be recognized as a tax-exempt organization, and/or the BVCC withdraws recognition of the Foundation.

**Section 2 – The Foundation’s Relationship to BVCC**

2.1 Asset Management. The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts made to the Foundation consistent with donor intent and according to all applicable laws.

2.2 Operations Oversight. The Foundation is responsible for the performance and oversight of all aspects of its operations based on its bylaws that clearly address the board’s fiduciary responsibilities, including expectations of individual directors based upon legal and ethical guidelines and a conflict of interest policy.

2.3 Staffing. The Foundation is responsible for the employment, compensation, and evaluation of its employees.

### **Section 3 – BVCC’s Relationship to the Foundation**

3.1 Representation. The BVCC president (or designee), the BVCC chief financial officer (or designee), and one member of the BVCC board of trustees are ex-officio, non-voting directors on the Foundation’s board of directors.

3.2 Communication. The BVCC’s ex-officio, non-voting directors are responsible for communicating BVCC’s priorities and long-term plans to the Foundation on a regular basis.

### **Section 4 – BVCC Responsibilities**

BVCC provides services to the Foundation as outlined below:

4.1 Funding Priorities. The BVCC’s ex-officio, non-voting directors must present the Foundation board of directors with a list of BVCC’s current private funding priorities. The BVCC relies upon the Foundation board of directors to assess the priorities and the private funding feasibility of each.

4.2 Donor and Constituent-Related Activities. BVCC supports the Foundation’s coordination of all philanthropic and constituent-related activities that seek and solicit private support and advocacy to benefit BVCC. Additionally, BVCC recognizes the Foundation as taking the lead role for the philanthropic-related activities described in this Agreement, on behalf of BVCC. BVCC trustees, administrators, faculty, staff, and other BVCC-selected or BVCC-sanctioned volunteers must work in conjunction with the Foundation board of directors to develop and steward philanthropic support, constituent engagement, and advocacy of BVCC priorities. BVCC will promptly notify the Foundation of gifts, bequests, and other private charitable support accepted by BVCC.

4.3 Provision of Data. When allowed by law, BVCC will provide to the Foundation data reasonably requested by the Foundation and deemed necessary by the Foundation for the maintenance and support of the Foundation’s efforts under this Agreement.

4.4 Other Services. BVCC will also provide other services at a mutually agreed upon rate. Those services include, but are not limited to, information systems and technologies, property security, custodial services, and facility maintenance.

### **Section 5 – Foundation Responsibilities**

The Foundation provides services to BVCC as outlined below:

5.1 Donor and Prospective Donor Engagement. The Foundation is responsible for various programs, services, and initiatives to strategically enhance and expand donor engagement with and private support for BVCC.

5.2 Communications Services. The Foundation provides donor and prospective donor communications related to its efforts and activities.

5.3 Gift Acceptance and Acknowledgment. The Foundation establishes, adheres to, and periodically assesses its gift acceptance and fund management policies and procedures. The Foundation acknowledges and issues receipts for all assets given to the Foundation and provides appropriate recognition and stewardship of such support. If assets are received by BVCC rather than the Foundation, the Foundation provides appropriate recognition for such gifts when properly notified by BVCC.

5.4 Constituent Records. The Foundation establishes and makes reasonable efforts to maintain electronic records of donors and other BVCC constituents. The Foundation enforces policies and procedures to comply with all applicable laws and regulations and to protect the confidentiality of Foundation records and the reasonable expectation of privacy attendant to constituent data.

5.5 Accounting Principles. The Foundation maintains financial and accounting records in accordance with generally accepted accounting principles or other comprehensive basis of accounting, as approved by an independent auditor.

5.6 Asset Management. The Foundation establishes and, from time to time, modifies asset allocation, disbursement, and spending policies and procedures that adhere to all current and future applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

The Foundation, in compliance with applicable laws and Foundation policies, receives, holds, manages, invests, and disburses contributions of cash, securities, and other forms of property, including the immediate investment of gifts and deferred gifts that are contributed in the form of planned- and deferred-gift instruments.

5.7 Fund Administration and Distribution. The Foundation administers private gifts to benefit BVCC and transfers funds to the designated entity within BVCC in compliance with applicable laws, Foundation policies, BVCC policies, and fund agreements. The Foundation's disbursements on behalf of BVCC must be for reasonable expenses that support BVCC and its programs, are consistent with donor restrictions and intent, and do not conflict with any applicable laws and regulations.

When distributing funds to the BVCC, the Foundation discloses any terms, conditions, or limitations legally imposed by the donor or legal determination on the gift. BVCC must abide by such restrictions and provide appropriate acknowledgement of such terms, conditions, or limitations and documentation of compliance.

5.8 Funding of the Foundation Operations. The Foundation is responsible for establishing a financial plan to pay for the costs 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.

From time to time, the Foundation may agree to undertake, with the option to charge a fee, at the request of the BVCC ex-officio, non-voting directors, a major fundraising campaign extraordinary to the established day-to-day activities of the Foundation.

Except as outlined herein or as otherwise agreed, the Foundation, at its own expense, provides office space, computers, telephones, adequate personnel, office supplies, and other such equipment and services that may be necessary to fulfill its responsibilities and obligations. In fulfilling this requirement, the Foundation, at its sole discretion, may lease the necessary space and/or equipment from BVCC or another entity.

5.9 Provision of Data. The Foundation engages an independent accounting firm annually to conduct an audit of the Foundation's financial records and provides the BVCC Board of Trustees with a copy of the annual audited financial statements by the end of the first quarter of BVCC's fiscal year. Other data is provided from time to time to enable BVCC to complete its audited financial statements and fulfill information requests by credit rating agencies. Such information includes, but is not limited to, the Foundation's asset allocation breakdown and investment performance, as well as an annual listing of payments made from the Foundation to BVCC.

5.10 Other Responsibilities. With the explicit approval of the Foundation board of directors, the Foundation may, from time to time, serve as an entrepreneurial instrument for BVCC for purposes including, but not limited to, the purchasing, developing, or managing of real estate for lease by BVCC.

The Foundation may accept licensing agreements and other forms of intellectual property or engage in other activities to increase Foundation revenue consistent with its mission. The Foundation must obtain permission from BVCC before entering into any licensing agreement for the use of BVCC's logo, name, or branding.

5.11 Salary Supplement. No salary supplements for any BVCC employee will be underwritten by the Foundation without the approval and public disclosure of the BVCC board of trustees.

5.12 Compliance. In fulfilling these obligations, the Foundation complies with applicable state and federal law and its own policies and procedures, including maintenance of bylaws, a conflict of interest policy, and a whistleblower policy for directors, staff, and volunteers.

## **Section 6 – Confidentiality and Access to Information by Other than Foundation Employees**

6.1 Public Documents. The Foundation provides access to all public documents of the Foundation including gift acceptance policies, investment and distribution policies, articles of incorporation and corporate bylaws, audited financial statements, and Internal Revenue Service 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. Contact information including, but not limited to, addresses, phone numbers, and email addresses for donors or prospective donors;
- b. Records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters;

- c. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge;
- d. 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;
- e. Records that identify a prospective donor and/or provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, or the name of the solicitor;
- f. Records disclosing the identity of a donor or prospective donor, including any 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;
- g. Information relating to fundraising plans and/or strategies;
- h. Trade secret information or information relating to the business of the Foundation which, if released, could create a competitive disadvantage;
- i. Individual employee information other than name and title;
- j. Individual student information not otherwise exempted;
- k. Information relating to trusts and/or annuities administered by the Foundation, except as to the amount of actual gifts to the Foundation from such a trust or annuity; and
- l. Other information protected by law.

6.3 Access to Confidential Information. When necessary or beneficial to the efficient execution of Foundation activities, the Foundation may provide access to Foundation data and records to select BVCC personnel on a limited, need-to-know basis in accordance with applicable laws and Foundation policies and guidelines. Such access will not be granted if the Foundation deems that the access will compromise the confidential nature of the Foundation's information and records or the classification of such information and records as trade secrets. Additionally, such access will not be granted if the Foundation deems that the access will compromise or undermine the reasonable expectation of privacy of donors or prospective donors with respect to the information provided to and/or maintained by the Foundation. Any non-Foundation employee with access to Foundation information must be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access. If additional licensure is needed to accommodate such access, BVCC will reimburse the Foundation for applicable licensure fees.

6.4 If a public records request is made of any BVCC official or employee for any information the Foundation deems confidential, even where there is a signed confidentiality agreement with the Foundation as outlined in section 6.3, the BVCC will give the Foundation twenty (20) business days' notice of the request so that the Foundation can seek a protective order. If a protective order is not secured

and the matter not resolved by the Foundation with the requestor, the BVCC may release any relevant requested records without any legal liability to the Foundation.

## **Section 7 – Other Matters**

7.1 Statement of Coordination. This Agreement is intended to contribute to the coordination of the mutual activities of BVCC and the Foundation.

7.2 Implied Covenants. By entering into this Agreement, the Parties acknowledge and accept that this Agreement includes a covenant of good faith and fair dealing. Furthermore, the Parties agree that the responsibilities and duties set forth herein are to be completed in a professional manner and in accordance with applicable professional standards.

7.3 Dissolution. Consistent with the provisions of the Articles of Incorporation of the Foundation, should the Foundation cease to exist or cease to be an IRC Section 501(c)(3) organization, the Foundation will transfer its assets and property to BVCC. Consistent with the provisions of the Articles of Incorporation of the Foundation, should the BVCC cease to exist, the Foundation will merge, consolidate, or dissolve pursuant to its Articles of Incorporation and Bylaws. For purposes of this section, a corporate reorganization, merger, or consolidation or renaming of the Bitterroot Valley Community College Foundation does not constitute a cessation of existence provided the Bitterroot Valley Community College Foundation, or its successor, is recognized as the affiliated foundation of Bitterroot Valley Community College for the purposes provided in BVCC Board Policy 6055.

7.4 Approval. This Agreement becomes effective when signed by the duly authorized officers from each Party. The Parties agree and understand that this Agreement will be reviewed and approved every two years, starting June 30, 2024.

7.5 Insurance and Indemnification. Each Party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, directors, trustees, 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 must be reasonably provided to the other upon request.

Each Party will indemnify and save harmless the other party and its officers, employees, agents, trustees, and agents from any and all claims, demands, actions, causes of action, suits, proceedings, judgments, losses, expenses, costs, or damages of any nature or kind whatsoever, to the extent caused by any negligent act or negligent omission or intentional or willful misconduct of the indemnifying party or its agents, employees, or representatives arising out of the indemnifying party's obligations under this Agreement.

Neither Party to this Agreement will be considered the agent of the other Party.

7.6 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.

7.7 Compliance with Law. Both parties agree to comply with all applicable laws, including but not limited to laws prohibiting discrimination on the basis of race, creed, sex, religion, disability, or any other protected class.

This Agreement supersedes all previous memoranda of understanding or operating agreements by and between the Parties, or other documents defining and/or controlling the relationship between the Parties.

The Parties have caused this Operating Agreement to be executed by their duly authorized officers as of the date set forth above.

**BITTERROOT VALLEY COMMUNITY COLLEGE**

**Marci Smith**

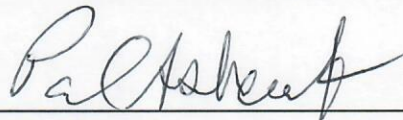
*PRINTED NAME: Chair, Board of Trustees*



*SIGNATURE: Chair, Board of Trustees*

**Paul Ashcraft**

*PRINTED NAME: Secretary, Board of Trustees*



*SIGNATURE: Secretary, Board of Trustees*

**BITTERROOT VALLEY COMMUNITY COLLEGE FOUNDATION**

**Theron Nelson**

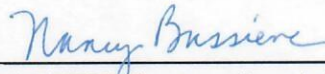
*PRINTED NAME: Chair, Board of Directors*



*SIGNATURE: Chair, Board of Directors*

**Nancy Bussiere**

*PRINTED NAME: Secretary, Board of Directors*



*SIGNATURE: Secretary, Board of Directors*