

**MONTANA STATE UNIVERSITY—BILLINGS  
FRIENDS OF PUBLIC RADIO, INC.**

**AMENDED AND RESTATED OPERATING AGREEMENT**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between MONTANA STATE UNIVERSITY—BILLINGS (the "University") and FRIENDS OF PUBLIC RADIO, INC., a Montana non-profit corporation (the "Friends").

RECITALS

A. The University is the licensee of public radio stations KEMC, KBMC, KYPR, KPRQ and their affiliates and translators (collectively, with all stations, affiliates and translators now existing or hereafter licensed and operational, the "Station"), all operating under the University's registered trade name, "Yellowstone Public Radio". As such, the University will continue to operate the Station as a public media outlet in affiliation with National Public Radio, so long as financial support necessary for their operation is available, in accordance with the following mission:

To provide in-depth news, public affairs, and cultural programming to a general adult audience in Montana and northern Wyoming--more specifically, news which focuses on meaning and detail; public affairs which offers complete expression of ideas and the opportunity for listener discussion; and cultural programming expressing heritage and innovation in the arts and humanities.

B. The Friends organization is dedicated to supporting, advancing, assisting, and cooperating with the Station and its staff as a regional public radio system for Montana and Wyoming, through fundraising, asset management, promoting, and providing advice in partnership with public media consumers, and the University.

C. On or about April 3, 2008, the University and the Friends entered into that certain Operating Agreement (the "Original Agreement"). The General Manager of the Station was also signatory to the Original Agreement for purposes of review and approval.

D. The University and the Friends wish to revise and update the Original Agreement and to continue their relationship under the terms and subject to the conditions provided in this Agreement.

NOW, THEREFORE, the parties hereto, intending to be bound by the mutual promises contained herein, agree as follows:

1. The Recitals set forth above are hereby incorporated into this Agreement in their entirety.

2. The University recognizes the Friends as a separately incorporated public benefit 501(c)(3) not-for-profit corporation, independent from the University, and agrees that the Friends' status as the recognized entity to support and advance the Station shall continue as long as the Friends complies with the requirements of applicable policies and guidelines of the University and the Montana University System as they currently exist, including but not limited to Board of Regents Policy 901.09 and 901.14 and University Policy 600 regarding Affiliated Organizations (collectively, "University Policy"), and as such policies and guidelines may from time to time be modified and amended.

3. The Chancellor of the University (the "Chancellor") or the Chancellor's representative shall inform the Friends of all such policies and guidelines that affect this Agreement or the relationship between the Friends, the Station, and the University and shall provide the Friends with sufficient time to comply with any changes in policies and guidelines that affect the Friends or this Agreement.

4. The University and the Friends agree to encourage and maintain the programming (including news, information, public affairs, cultural, entertainment, and educational on-air programming and related online and social media content) and operational independence and integrity of the Station as appropriate for its mission as a public radio station affiliated with National Public Radio.

5. The Board of Directors of the Friends (the "Board") shall act as liaison between the public radio listener community and the Station regarding the operations and programming of the Station. The Friends may not make any decisions or issue any directives about the Station's operations and programming, all of which shall be subject to the independence of the Station's management and staff ("Station Management"), in accordance with generally accepted journalistic and public broadcasting standards.

6. The University agrees to encourage and maintain the independence of the Friends and, at the same time, foster a cooperative relationship among the University, Station Management and staff, and the Friends.

7. The Chancellor or the Chancellor's representative and the University's Director of Business Services shall be ex-officio, non-voting members of the Board and its committees. A representative of the Station Management or such other employee of the University designated by the Chancellor, shall be an ex-officio non-voting member of the Board.

8. The University shall include the Friends as an active participant in the University's strategic planning as it applies to or affects the Station. The University shall obtain advice from the Friends before changing or defining any major needs, priorities, and purposes of the Station. The Board, Station Management, and the Chancellor, or such other University personnel as the Chancellor may designate, shall meet on a regular basis to review and discuss the policies, procedure, administration, and future planning of the Station.

9. The Friends agree to cooperate and consult with Station Management and the Chancellor or the Chancellor's designee(s) in fulfilling its purpose and responsibilities.

10. The Friends will provide services to the University, including, but not limited to, the following:

A. The Friends organization is designated as a separate 501(c)(3) Affiliate Organization that works in partnership with the University to obtain financial support from individuals, corporations, and foundations for the use and benefit of the Station. The Friends will work in concert with Station staff to solicit funding through fund drives, listener support marathons, special projects, special events, comprehensive/capital campaigns, grant applications, legislative and administrative action, as may be authorized by the Board in consultation with Station Management and the Chancellor, as needed by the University to fulfill the Station's mission. The University may accept gifts made directly to or for the Station, or may request donors to make such gifts directly to the Friends. All gifts received by the University or the Friends for the support of the Station shall be reported to each other to ensure the proper receipting and recording of all such gifts in accordance with state and federal tax laws.

B. The Friends shall coordinate with Station Management and the Chancellor or other appropriate University officers and seek regular and ongoing University input regarding funding goals, funding programs, and funding campaigns proposed by the Friends.

C. The Friends, through its Finance Investment and Audit Committee, with the administrative support of the Station staff, shall administer endowment funds raised for the Station, both current gifts and income from endowments, and shall solicit, receipt, record, and report funds raised and administered for the benefit of the Station. The Friends shall disburse endowment funds to the University for the benefit of the Station as the Board determines to be appropriate and necessary to meet the needs of the Station, subject to the terms and conditions applicable to such funds. The Board will confer with Station Management and the Chancellor to review the endowment funds and disbursement requests. The Friends, acting in a fiduciary capacity, shall maintain and administer appropriate policies for the management and investment of endowment funds. The Friends shall provide the University with copies of such policies.

D. The Friends may utilize any unrestricted gifts the Friends receive to make grants to the Station at such times and in such amounts as the Friends and the University deem appropriate for the purpose of (i) paying operational costs of the Station, (ii) contributing to staff, equipment and programming expenditures of the Station or (iii) serving any other lawful purpose beneficial to the Station, consistent with and subject to the terms and conditions of this Agreement. Such unrestricted funds may also be used for the purpose of supporting the development program of the Friends on behalf of the Station, for specific Station projects requested by Station Management or the University, or for any other purpose consistent with the Friends' purposes. The Friends have the right to assess fees for services or to impose gift taxes to support its operations.

E. The Friends will support grant writing, fundraising, and development activities for the Station. This includes supporting the University in:

1. Working with sources and agencies available to assist in obtaining

federal funding for the Station from a variety of areas;

2. Working with other potential external funding providers (corporations, private foundations, and private parties) to obtain funding support for the Station; and

3. Seeking private funding for property, land, and other capital acquisitions to support the Station.

F. The Friends may conduct annual reviews of the Station's use of donated funds. The purposes of such reviews 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 Friends.

G. The Friends shall provide access to its data and records to Station Management and the University on a need-to-know basis in accordance with applicable laws, Friends' policies and guidelines.

11. The University shall provide the services of Station Management and staff to assist the activities of the Friends, including the services of the development director and business manager, and other staff support for administration of the Friends fundraising efforts and the funds the Friends raise. The Station shall provide broadcast time and staff time and support and coordinate the Friends fund raising and support programs in cooperation with the Friends, will maintain demographic records, and will communicate on a regular basis with the Board regarding activities and purpose of the Friends and the welfare and needs of the Station.

12. The Friends and the Station Management will confer with donors concerning criteria and administrative guidelines for all endowments and contributions to endowment funds for the Station. Endowment donors will be provided with formal gift acknowledgement letters and receipts, thank-you notes written by officers of the Friends or Station Management. When feasible, the Station will arrange to have endowment donors meet with the Station Management and designated staff to acknowledge endowment donations.

13. The Friends and the University will provide a positive and ongoing program of public relations on behalf of the Station. The Board will serve on public radio-related committees as reasonably requested by Station Management and the Chancellor, and will assist with receptions and other development and outreach programs. The Friends will consider funding requests from the University to further providing public radio services to the Station's coverage area.

14. The Friends may, in connection with its activities and with prior approval by the University, use the names, logos, seal and marks associated with the operations of the Station. The Friends shall not delegate the authority to use such names, logos, seal and marks without the written consent of the University. The Friends agrees to cease using the names and symbols of the Station and the University if a) the Friends dissolves; b) the Chancellor withdraws recognition of the Friends; or c) the Friends ceases to be recognized by the Internal Revenue

Service as a tax-exempt organization.

15. The Chancellor's decision to withdraw recognition of the Friends may be appealed to Montana State University and then to the Montana Board of Regents under Section 203.5.2 of the Montana University System, Policies and Procedures Manual, as amended. The Chancellor will provide the Friends with information about the process to be followed by the Friends for such an appeal, upon request of the Friends.

16. In consideration for the Friends' services defined in this Agreement, the University will provide without charge to the Station the following:

A. Office space and studio space for the Station and all utilities, maintenance, and custodial functions, office equipment services, and other facilities or services as reasonably required for such facilities.

B. Operational support in addition to the facilities and services stated in subparagraph 16A in an amount determined by the Chancellor to be appropriate in light of the University's budget, the financial requirements of the Station to meet its mission, and in consultation with the Board. These operational funds will be allocated through the University budget. The University and the Friends acknowledge that an additional agreement between them may be required to be executed if funds for maintenance and upgrades are obtained from a donor or other third party source.

C. Prompt repair and maintenance of electrical, mechanical, plumbing, utility, and similar interior and exterior infrastructure systems and services provided by the University as needed to meet the Station's 24 hour per day 7 day per week broadcasting schedule.

17. The University and the Friends agree that all funds given to the Station or to the Friends (i) will be deposited in the Friends' accounts in FDIC – insured institutions; (ii) will be accounted for and delivered to the University by checks bearing the signatures of any two of the President, Vice President and Treasurer of the Friends; (iii) will be expended in accordance with University Policy and the policies adopted by the friends; and (iv) will be supported by receipts and vouchers as required by such policies in adherence to the general charitable purposes of the Friends, in conformance with any restrictions imposed by the donor or the Friends as to the use or purpose of the specific funds, and in accordance with the regulations of the Corporation for Public Broadcasting.

18. The University shall maintain the financial and accounting records of the Station, including reconciliation of fundraising receipts and funds transferred from the Friends. The University agrees that such financial and accounting records shall be kept 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 the University or by a firm of Certified Public Accountants, as determined appropriate by the University in consultation with the Board. The Friends shall have the right of inspection of all financial and accounting records of the Station. The University shall provide the Board with copies of all financial audits of the Station.



19. The Board shall review and recommend to the Chancellor for approval the following: a) the Station annual budget and quarterly budget reports, as prepared by Station Management; b) recommendations of the Station Management regarding the use of funds contributed by the Friends for the Station employee salaries, equipment purchases, programming, and other operational expenses; and (c) the search for, recruitment and hiring Station Management, in each case according to University Policy and procedure.

20. The University agrees to submit annual or biannual audited financial statements of the Friends and a list of Friends officers through the Chancellor 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.

21. The University shall conduct annual reviews and evaluations of Station Management in accordance with University Policy. The University may request comments from the Board or a committee thereof as it deems appropriate.

22. Because of the privacy interests of the donors supporting the Station, all records of donations to and donors of the Friends will be kept confidential, to the extent permitted by law.

23. The Friends shall comply with all applicable state and federal laws concerning its operations and functions. The University shall ensure that the Station shall comply with all applicable state and federal laws, and University System regulations, concerning the operations and functions of the Station. The University shall ensure that the Station will comply with workers' compensation laws, unemployment insurance laws, minimum wage laws, and human rights and discrimination laws affecting its employees. In particular, all hiring by the Station must be on a basis of merit and qualifications. The Station 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. The University's Human Resources Department will oversee the hiring of all Station personnel and compliance with State of Montana and University laws and regulations, including any and all requirements for background and security checks. In the event that the Friends hires any employees it shall comply with the above-stated employment laws and regulations and shall obtain and follow advice from the University's Human Resource Department.

24. The Friends shall adopt and maintain conflict-of-interest and whistleblower policies and shall adhere to such policies. The Friends shall provide a copy of such policy to the University.

25. All Station employees shall be paid through the University payroll system. No salary supplements for employees of the Station or any University personnel will be underwritten by the Friends without prior approval of and public disclosure by the Montana Board Regents of Higher Education.

26. 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 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.

27. 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.

28. If the Friends corporate structure is dissolved, the Board shall dispose of all of the assets of the Friends 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 Montana Thirteenth Judicial District Court in and for Yellowstone County by transfer to the University. The Friends shall provide copies of its Articles of Incorporation and Bylaws to the University as the same shall be amended from time to time.

29. This Agreement amends, restates and replaces the Original Agreement and may itself be modified only by written amendment signed by the University and the Friends.

30. Any notice or other communication to either party in connection with this Agreement shall be in writing and shall be sent by manual delivery, electronic mail or first class United States mail (postage prepaid) addressed to the Chancellor on behalf of the University and to the current President of the Friends.

The following persons being duly authorized to sign this Agreement and bind the above named parties, do hereby affix their signatures as of the date first written above.

**MONTANA STATE UNIVERSITY—BILLINGS**

By: Ronald W. Loran  
8/7/17  
Its Chancellor

**FRIENDS OF PUBLIC RADIO, INC.**

By: [Signature]  
7/12/17  
Its President