

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**MONTANA PUBLIC EMPLOYEES ASSOCIATION**

**AND THE**

**MONTANA UNIVERSITY SYSTEM**

**JULY 1, 2011 THROUGH JUNE 30, 2013**

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## **ARTICLE I - RECOGNITION**

### **Section 1. Recognition**

The Montana University System, hereinafter referred to as the employer, recognizes the Montana Public Employees Association, hereinafter referred to as the bargaining agent, as the sole and exclusive representative of all employees in the bargaining unit for purposes of bargaining with the employer and representing the interests of employees consistent with the terms of this agreement. The term employee as it is used in this agreement shall mean an employee in the bargaining unit.

### **Section 2. Bargaining Unit**

The bargaining unit shall include persons employed by the employer at The University of Montana-Missoula, Montana State University-Bozeman, Montana State University-Billings, Montana Tech of The University of Montana, The University of Montana Western and the Colleges of Technology in positions and job titles within the bargaining unit as defined and certified by the Board of Personnel Appeals and/or as mutually agreed to by the parties.

### **Section 3. Excluded Employees**

Confidential, supervisory and managerial employees are excluded from the bargaining unit. Temporary and fixed-term employees are excluded from the bargaining unit except that temporary and fixed-term employees who work an average of twenty (20) hours or more a week in positions and classifications similar to those in the bargaining unit in excess of four (4) consecutive months shall be included in the bargaining unit. Part-time employees who are scheduled for less than an average of twenty (20) hours per week are excluded from the bargaining unit.

Students shall not be hired into any position which would result in the displacement of an employed worker. This means that whenever an employee has been laid off, the number of hours of student employment in the laid off employee's department may not be increased in order to cover some or all of the laid off employee's duties for the duration of the layoff. A student may be regarded as a "student employee" only so long as the employment of the student is not in a bargaining unit position. Any student who is employed in a bargaining unit position shall be regarded as an employee rather than as a student regardless of the number of courses or

credits for which registered. Any student who is employed in a bargaining unit position shall be required, as a condition of continued employment, to pay dues or a representation fee in lieu of dues as a contribution towards the administration of this agreement in the same manner as any other non-student.

## **ARTICLE II - RIGHTS OF THE BARGAINING AGENT**

### **Section 1. Employee Representative**

The bargaining agent shall have the right to appoint an employee representative for each covered campus who shall be recognized by the employer as having authority to report irregularities in interpretation or application of this agreement to the bargaining agent and to assist the staff of the bargaining agent in the adjustment of grievances. The name of the employee representative at each campus shall be forwarded in writing to the appropriate campus representative. Said representatives shall not be discriminated against for discharging duties assigned by the bargaining agent, it being understood that performance of such duties shall not materially interfere with the performance of the employee's normal duties.

### **Section 2. Visiting Work Areas**

The authorized representative of the bargaining agent shall have access to the job during working hours for official business after notifying the personnel officer or designated official of the work area to be visited and the anticipated time of the visit. Any such visit may not disrupt work in progress.

### **Section 3. Bulletin Boards**

The bargaining agent shall have the right to use specified bulletin boards and regular posting areas for posting of official business notices. Political material may not be posted that reflects the endorsement of a specific candidate or political party for national, state, or local office.

### **Section 4. Campus Mail**

The bargaining agent or designee shall have the right to use campus mail and campus e-mail for the transmittal of association newsletters, meeting notices and other membership information.

**Section 5. Policy Manual**

The bargaining agent shall be furnished, upon request, a current copy of any official policy of the employer relating to the terms or conditions of employment of employees in the bargaining unit.

**Section 6. Meeting Rooms**

When available, and upon receipt of adequate notice and request, the employer shall provide meeting room space for bargaining agent meetings with bargaining unit personnel and invited guests in accordance with campus regulations.

**Section 7. Bargaining Unit List**

The employer shall furnish the bargaining agent with a monthly list of the names of newly-hired and terminated employees and temporary employees who are scheduled for an average of twenty (20) or more hours per week and have worked in excess of four (4) consecutive months.

**Section 8. Labor Management Committee**

In order to facilitate communication and resolve issues of mutual interest, it is agreed that Labor Management Committees shall be established with participation of representatives of the Montana University System and the Montana Public Employees Association. Representatives of both parties shall determine Labor Management Committee training needs, appropriateness of Labor Committees per campus, membership, bylaws, meeting dates and agendas.

**ARTICLE III - BARGAINING AGENT SECURITY**

**Section 1. Agency Shop**

All present employees covered by this agreement who are not members of the bargaining agent's labor organization, who do not make application for membership therein within thirty (30) calendar days of the effective date of this agreement shall, as a condition of continued employment, pay to the bargaining agent a representation fee as a contribution toward the administration of this agreement. New employees shall be allowed thirty (30) calendar days after notification by the union in which to comply with this requirement. Any employee who fails to comply with this requirement shall be discharged by the employer within seven (7) calendar days after receipt of written notice from the bargaining agent. Within thirty (30) days

of the effective date of this agreement, the bargaining agent shall certify to the employer that its representation fee and collection procedures are in accordance with all legal requirements.

### **Section 2. Dues Checkoff**

The employer agrees, upon receipt of written authority from the employee, to deduct from the pay of the employee the monthly amount of dues, or service fee in lieu of dues, as certified by the appropriate officer of the bargaining agent. The aggregate deductions of all employees shall be remitted, together with an itemized statement, to the appropriate officer of the bargaining agent by the 15th of the succeeding month. (§ 39-31-203, Mont. Code Ann.)

### **Section 3. Indemnification**

The bargaining agent will indemnify and hold the employer harmless against any and all liability including but not limited to such items as wages, damages, awards, court costs and attorney fees which may arise by reason of or result from the operation of this article.

## **ARTICLE IV - MANAGEMENT RIGHTS**

The bargaining agent recognizes the prerogative of the employer, subject to the terms of this agreement, to operate and manage its affairs in all areas such as, but not limited to:

- 1) Directing employees.
- 2) Hiring, promoting, transferring, assigning and retaining employees.
- 3) Relieving employees from duties because of lack of work or funds or under conditions where continuation of such work would be inefficient or nonproductive.
- 4) Maintaining the efficiency of the employer's operations.
- 5) Determining the methods, means, job classification (title) and personnel by which the employer's operations are to be conducted.
- 6) Taking whatever actions may be necessary to carry out the missions of the employer in situations of emergency.
- 7) Establishing the methods and processes by which work is to be performed. (§ 39-31-303, Mont. Code Ann.)

All rights and prerogatives of the employer which are not specifically relinquished in this agreement shall be retained by the employer.

## **ARTICLE V - NO WORK STOPPAGES**

There shall be no strikes, slowdowns or other work stoppages on the part of the bargaining agent, and there shall be no lockouts by the employer during the term of this agreement, unless good faith bargaining has culminated in a bona fide mutual impasse on wages pursuant to § 39-31-307, Mont. Code Ann., or there has been legislative action denying funds for agreements on wages resulting from pre-budgetary negotiations.

## **ARTICLE VI - NONDISCRIMINATION**

The employer and the bargaining agent agree that they will work cooperatively to assure that all employees have equal employment opportunities. There shall be no unlawful discrimination by either party on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

## **ARTICLE VII - PAY AND HOURS**

### **Section 1. Work Day**

The basic straight time scheduled work day shall be eight (8) consecutive hours, exclusive of lunch period, which is preceded and followed by at least eight (8) hours off for all employees except: (1) those engaged in agriculture and stock raising; and (2) temporary scheduling necessitated by exceptional circumstances.

### **Section 2. Workweek**

Except for those engaged in agriculture or stock-raising, a regular workweek shall consist of forty (40) hours worked in five (5) consecutive days either preceded or followed by two (2) days off.

### **Section 3. Alternate Work Schedule**

The employee and the employer may agree to an alternate work schedule wherein forty (40) hours may be worked as straight time in other than five (5) days or eight (8) hour days. When

recruiting for positions which require an alternative work schedule, the notice of vacancy will specify the required alternative work schedule. If an employee accepts such a position, that employee must agree to the alternate schedule as a condition of continued employment.

#### **Section 4. Work Schedule**

Employees' work schedules shall not be changed unless given a ten (10) day notice prior to any change in schedule except:

- 1) those engaged in agriculture and stock raising;
- 2) schedule changes necessitated by exceptional circumstances;
- 3) by mutual agreement of the employee and supervisor; or
- 4) temporary schedule changes for employees working special events or for employees providing or supporting catering services, in which case a minimum of two (2) days notice shall be given..

#### **Section 5. Rest Breaks**

Full-time employees shall be allowed a duty-free fifteen (15) minute rest break in both the first and second half of each scheduled shift. Part-time employees will be allowed a duty-free fifteen (15) minute rest break within each four (4) consecutive hour work period. It shall be the supervisor's responsibility to make time available to allow each employee an opportunity to take such rest break. Such break shall be taken without loss of pay and the employee shall not be required to make up such time. Unused rest breaks do not accrue.

#### **Section 6. Meal Periods**

No employee shall be required to work more than five (5) consecutive hours without being allowed a meal period, except where necessitated by unique job requirements. Any employee who is not granted an unpaid meal period, shall be granted an opportunity to consume a meal during working hours. No unpaid meal period shall be for less than one-half (1/2) hour. If an employee is granted a one-half (1/2) hour meal period during which a free meal is made available in accordance with campus policy, that employee may be required to remain on the premises and may be called back to work during the meal period.

**Section 7. Longevity Pay**

Longevity pay shall be in accordance with state statutes for each contiguous five-year period of uninterrupted state service. Each employee who has completed five (5) years of uninterrupted service shall receive 1.5% of their base salary multiplied by the number of completed, contiguous five-year periods of uninterrupted service. In addition, each employee who has completed 10 years of uninterrupted state service, 15 years of uninterrupted state service, or 20 years of uninterrupted state service must receive an additional 0.5% of the employee’s base salary for each of those additional 5 years of uninterrupted service.

<b>Increment</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
<b>Years</b>	0	5	10	15	20	25	30	35	40	45
<b>Longevity Rate of Base Pay</b>	0	1.5%	3.5%	5.5%	7.5%	9.0%	10.5%	12.0%	13.5%	15.0%

**Section 8. Insurance Coverage**

The employer contribution to health insurance for eligible employees shall be in accordance with state statute (§ 2-18-703, Mont. Code Ann.). In the event an employee sustains a Workers' Compensation injury while employed at a unit of the university system, the employee is eligible to receive up to four (4) months of the employer’s contribution towards group health insurance. Employees who have been employed for less than four (4) years are eligible to receive this benefit once in a two (2) year period. Employees who have been employed for four (4) or more years are eligible to receive the benefit twice in a two (2) year period. For purposes of this benefit, the two (2) year period shall commence at the time of injury.

**Section 9. Retirement**

Retirements shall be governed by applicable state statutes. The amount of the employee and employer contributions is set forth in Title 19 of state statute.

**Section 10. Pay Days**

The employer shall establish regular pay days and shall make available an itemized statement of the nature and amount of every deduction from wages.

**Section 11. Payroll Deductions**

Any employee shall be entitled upon written request to have any of the following deducted from

wages: university sponsored health or life insurance, approved tax sheltered annuities, dues or service fees due to bargaining agent. Other deductions may be made with the approval of the designated campus representative.

### **Section 12. Wage Withholding**

After notifying the affected employee, the employer shall have the right to withhold from wages or any other funds due and payable to an employee any amount the employee owes the employer or which the employee has unjustly received from the employer.

### **Section 13. Premium Pay**

Nonexempt employees, defined as those employees covered by the overtime provisions of federal law, are entitled to premium pay in accordance with the following subsections.

#### **Subsection A. Overtime**

When a nonexempt employee is required to work in excess of eight (8) hours per shift or in excess of forty (40) hours per week, the employee is eligible for overtime at the rate of one and one-half (1 1/2) times the normal rate of pay for all overtime worked. When an employee agrees to an alternate work schedule such as ten (10) hours per day, forty (40) hours per week, only those hours in excess of forty (40) hours per week shall be considered overtime and paid at one and one-half (1/2) times the normal rate.

##### 1) Approval Required

In order to constitute overtime for which an employee is entitled to be paid, the employee must have obtained the approval of the supervisor prior to working the additional time. It shall be the responsibility of the supervisor to ascertain that employees do not work any overtime for which the supervisor does not desire that the employer be charged and the responsibility of the employee to limit overtime to that which is requested by the supervisor or is essential under the circumstances, and to obtain the approval of the supervisor for any overtime worked.

Overtime will be recorded in increments of no less than thirty (30) minutes, but all overtime earned in fractions of thirty (30) minutes will accumulate until the

thirty (30) minute minimum is attained, at which point the overtime will be recorded.

2) Avoidance Prohibited

Employees shall not be required to suspend work during regularly scheduled hours to absorb overtime.

3) Time Worked

For purposes of computing the eight (8) hour day or the forty (40) hour week to determine entitlement to overtime pay, all sick leave, vacation leave and holidays shall be considered as time worked to be added to other hours worked.

4) Overtime Equalization

The employer shall attempt to equalize the opportunity for overtime worked among employees in the same work unit and job title when feasible.

**Subsection B. Show Up Guarantee**

It shall be the responsibility of the supervisor to notify any permanent employee whose services will not be required for any scheduled shift. Any such employee who shows up for work at the regularly scheduled time because the supervisor failed to give such notice shall be guaranteed four (4) hours of work. If no work is available, the employee shall receive four (4) hours of regular pay in lieu of work.

**Subsection C. Call Outs**

Full-time nonexempt employees who are called out for work and report outside their regular eight (8) hour shift or forty (40) hour workweek shall be paid for a minimum of two (2) hours at the rate of one and one-half (1 1/2) times the regular rate of pay. It is understood that this provision does not apply to work, which occurs immediately prior or immediately after the work day.

**Section 17. Compensatory Time**

Any nonagricultural employee in a position which is exempt from the overtime provisions of federal law, hereinafter referred to as an exempt employee, shall be entitled to accrue

compensatory time and shall not be entitled to overtime or premium pay for call outs, holidays, or any show up guarantee. Agricultural employees shall receive either their regular rate of pay or compensatory time, as determined by the employer, for all hours worked in excess of forty (40) hours in any week.

Subsection A. In order to accrue and use compensatory time, the employee must obtain advance approval from his/her supervisor. Compensatory time must be recorded during the pay period in which it is earned or it will be forfeited.

Subsection B. Compensatory time will be credited on an hour-for-hour basis for all authorized time worked in excess of forty (40) hours per week.

Subsection C. In no case will exempt employees or agricultural employees receive compensation for unused compensatory time.

## **Section 18. Compensatory Time Option for Nonexempt Employees**

Upon agreement of the employer and the employee, a nonexempt employee may receive compensatory time in lieu of overtime in accordance with the provisions of the Fair Labor Standards Act.

### **Subsection A. Accrual Rate**

Compensatory time for nonexempt employees will accrue at the rate of one and one-half (1 1/2) hours for each one (1) hour of overtime worked.

### **Subsection B. Maximum Accumulation**

The maximum amount of time which may be accumulated is 160 hours of overtime worked or 240 hours of compensatory time.

### **Subsection C. Use of Compensatory Time**

An employee must have the appropriate supervisor's prior approval to use accumulated compensatory time. The dates when employees may use accrued compensatory time shall be determined by agreement between each employee and the supervisor with regard to the best interest of the employer as well as the best interest of each employee. In the

event a request to use compensatory time is denied, reasons will be provided.

**Subsection D. Payment on Termination**

If employment is terminated, any unused compensatory time will be paid to the employee at the regular rate of pay at the time of termination, or the average regular rate received by the employee during the last three (3) years of the employee's employment, whichever is higher. The employing campus may establish other timeframes in which compensatory time for nonexempt employees must be used or will be cashed out.

**ARTICLE VIII - LEAVES**

**Section 1. Annual Vacation Leave**

Employees shall be eligible for annual vacation leave in accordance with state statute, a copy of which is attached in Addendum B. Annual vacation leave charges will be recorded and approved in accordance with campus policy.

**Subsection A. Extension by Leave Without Pay**

Leave of absence without pay may be used to extend regular vacation, with prior approval of the supervisor.

**Subsection B. Time Annual Vacation Leave Taken**

The dates when employee's annual vacation leave shall be granted shall be determined by agreement between each employee and the employer with regard to the best interest of the employer as well as the best interest of each employee. In the event of conflicting requests for vacation, the employee with seniority shall prevail. Earned leave credits need not be taken all at one time.

**Section 2. Sick Leave**

Employees shall be eligible for sick leave in accordance with state statute, a copy of which is attached in Addendum B. Sick leave charges will be reported and approved in accordance with campus policy.

### **Subsection A. Conditions for Use of Sick Leave**

An employee may use sick leave credits for:

- 1) illness;
- 2) injury;
- 3) medical disability;
- 4) maternity related disability, including prenatal care, birth, miscarriage, abortion or other medical care for either employee or child;
- 5) quarantine resulting from exposure to contagious disease;
- 6) medical, dental or eye examination or treatment;
- 7) necessary care of or attendance to an immediate family member, or at the employer's discretion, another person, for the above reasons until other attendance can reasonably be obtained;
- 8) death or funeral attendance for an immediate family member or, at the agency's discretion, for another person.

### **Subsection B. Immediate Family Defined**

"Immediate family" means the employee's spouse and any member of the employee's household, or any parent, sibling child, grandparent, grandchild or corresponding in-law.

### **Subsection C. Policy**

Accumulated sick leave credits should be regarded by employees as valuable free health insurance that maintains the employee's income during a period of personal illness or family emergencies. Sick leave benefits should be carefully guarded and not dissipated or abused.

## **Section 3. Jury Duty or Subpoena**

Any employee summoned as a juror or subpoenaed as a witness shall be granted leave in accordance with state law, a copy of which is attached in Addendum B.

## **Section 4. Military Training Leave**

Military training leave shall be granted in accordance with state law, a copy of which is attached in Addendum B.

### **Section 5. Bargaining Pool Leave**

Unless work requirements or financial resources require otherwise and with advance notification to the employer of the requested time off, an employee who is a member of a regularly constituted union committee or officer of the union shall be granted reasonable leaves of absence with pay (up to eight (8) hours per day straight time) to conduct union business provided such time is deducted from available bargaining pool hours. It is employee responsibility to account for such leave on their time sheet.

Bargaining pools shall be established at each campus by giving employees the right to donate up to forty (40) hours annually of their annual leave time to a reserve fund for the purpose of allowing certain employees time off with pay for performance of their duties as committee members. Employees who are not in the bargaining unit may also donate annual leave to the bargaining pool. A list of members of regularly constituted committees and/or officers of the bargaining agent will be supplied to the human resources director or other appropriate official by the bargaining agent.

In exceptional circumstances and only for the purpose of allowing time off to attend negotiations, a campus may offer to donate bargaining pool leave hours to another campus' bargaining pool. MPEA chapter executive officers shall initiate the donation of bargaining pool hours through the bargaining agent. A formal request from the bargaining agent will then be submitted to the Human Resources Director of the receiving campus. The receiving campus administration has the option of declining the donation.

### **Section 6. Public Service Leave**

An employee who is elected or appointed to public office shall be entitled to a leave of absence without pay not to exceed 180 days per year in accordance with state law, a copy of which is attached in Addendum b.

### **Section 7. Maternity Leave**

Employees shall be eligible for maternity leave in accordance with state law, a copy of which is attached in Addendum B.

## **Section 8. Educational Leave and Fee Waivers**

Any permanent employee who works at least three-quarter time (.75 FTE) during the entire period of enrollment is entitled to a waiver or partial waiver of certain fees in accordance with campus policy and may take any number of courses provided the employee is academically qualified. When a course which an employee desires to take is only offered when the employee is regularly scheduled to work, the employee must obtain advance approval from the supervisor, and may take either vacation leave or leave without pay for all hours absent from the regular work schedule, or make up the time absent from work. Employees are encouraged to further their education, and approval by the supervisor for the employee to take a course may not be arbitrarily or capriciously withheld. When attendance at courses or workshops is required by the employer, the cost of the course or workshop shall be borne by the employer.

## **Section 9. Leaves of Absence Without Pay**

### **Subsection A. Approval Required**

An employee desiring leave of absence without pay shall request advance approval from the supervisor. Approval of any leave without pay for five (5) or more consecutive days shall be obtained in writing from the supervisor. The maximum leave of absence shall not exceed one (1) year.

### **Subsection B. Effect of Leave Without Pay**

Vacation and sick leave credits do not accrue when an employee is on leave without pay and the employer's contribution to medical insurance is discontinued if the leave exceeds thirty (30) calendar days. However, an employee may remain on group medical insurance by personally paying the amount of the employer's contribution plus the regular monthly premium. No time on leave without pay may be considered for probationary purposes. Seniority ceases to accrue during a leave without pay in excess of thirty (30) calendar days except when the leave without pay is because the employee was called to active military duty.

### **Subsection C. Disability**

In the event that an employee becomes incapable of performing the regular duties of the employee's position, sick leave, annual leave, and the six (6) month maximum of leave

without pay have been exhausted, and the employee is not able to return to perform the full duties of the position, then the employer may discontinue the employment permanently and recruit a permanent replacement for the position. Upon written request to the campus human resource office, the period of leave without pay may be extended to six (6) additional months with accompanying medical documentation.

## **ARTICLE IX - HOLIDAYS**

### **Section 1. Recognized Holidays**

For pay purposes, the following shall be recognized except where the employer exchanges a holiday in accordance with Section 2. Variations in the holidays listed below may be affected by agreement of the parties for employees in county offices and field locations.

Employees shall be granted the following paid holidays:

- 1) New Year's Day - January 1
- 2) Martin Luther King Jr. Day - Third Monday in January
- 3) Lincoln's and Washington's Birthdays - Third Monday in February
- 4) Memorial Day - Last Monday in May
- 5) Independence Day - July 4
- 6) Labor Day - First Monday in September
- 7) Columbus Day - Second Monday in October
- 8) Veteran's Day - November 11
- 9) Thanksgiving Day - Fourth Thursday in November
- 10) Christmas Day - December 25
- 11) State General Election Day - Even numbered years

### **Section 2. Holiday Exchanges Authorized**

The Board of Regents of Higher Education may designate the following business days as holidays for campus employees in exchange for the same number of legal holidays enumerated above in accordance with § 20-25-306, Mont. Code Ann.

- 1) the Friday following Thanksgiving;
- 2) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and
- 3) the Friday after Christmas or New Year's Day if either holiday falls on Thursday.

### **Section 3. Holiday Pay**

Subsection A. Eligible employees shall receive a maximum of eight (8) hours regular pay for all holidays. When an employee is required to work on a holiday, compensation will be at the rate of two and one-half (1/2) times his/her regular rate of pay or upon mutual agreement, one and one-half (1/2) times his/her regular rate of pay and an alternate day off to be taken at a time agreeable to the employee and employer. Eligible exempt employees who are required to work on a holiday shall receive their regular rate of pay and an alternate day off to be taken at a time agreeable to the employee and the employer.

Subsection B. The employee shall receive compensation at the premium rate of one and one-half (1/2) times the regular rate (“premium pay”) for work performed on the day the holiday is observed, unless the employee is scheduled or required to work on the actual holiday. If the employee is scheduled or required to work on the actual holiday, the actual holiday shall be considered as the holiday for purposes of calculating pay for work performed on a holiday. The employee will receive either premium pay for working on the day the holiday is observed or for working on the actual holiday, but not both. Application of this section will apply only to New Year’s Day, Independence Day, and Christmas Day, as defined in Section 1 of this Article.

### **Section 4. Part-Time Holiday Pay**

Part-time employees shall receive holiday pay on a pro rata basis.

### **Section 5. Additional Day Off**

Any full-time employee who is scheduled for a day off on a day which is observed as a holiday shall be entitled to receive a day off either on the day preceding or following the holiday, whichever allows a day off in addition to the employee's regularly scheduled day off or an alternate day off which is agreeable to the employee and the employer (§ 2-18-603, Mont. Code Ann.).

### **Section 6. Holiday Pay Eligibility**

In order to be eligible for holiday pay, an employee must be in a pay status on the last regularly

scheduled working day immediately before or on the first regularly scheduled day immediately after the holiday (§ 2-18-603, Mont. Code Ann.). If a new employee or an employee returning from inactive status or layoff reports to work on a day following the holiday, the employee will not receive compensation for the holiday except as provided for in Section 7.

### **Section 7. Holiday Layoff**

Employees temporarily laid off due to semester break in December and January shall be entitled to holiday pay for Christmas and New Year's Day. Any employee laid off or involuntarily terminated five (5) calendar days or less prior to Christmas or New Year's shall receive pay for that holiday.

## **ARTICLE X - PROBATION, PROGRESSIVE DISCIPLINE, AND DISCHARGE**

### **Section 1. Probationary Period**

The first six (6) months of employment of any employee newly hired into a permanent position covered by this agreement shall be a period of probation with the exception of campus police officers whose probationary period shall be one (1) calendar year from the date of hire. An employee's probationary period may be extended in unusual circumstances for an additional three (3) months after written notice to the employee and the union. At any time during the period of probation the employee may be discharged without any showing of cause and without recourse to the grievance procedure.

### **Section 2. Progressive Discipline**

Progressive discipline shall be utilized where appropriate. Progressive discipline is a process of applying the appropriate type of discipline to the infraction based on the severity of the offense and the employee's work history. Progressive discipline may range from corrective counseling to termination.

### **Section 3. Discharge for Just Cause**

A permanent employee is one who has completed the probationary period. No permanent employee may be discharged without just cause.

The following seven (7) test questions will be used to determine just cause for discharge.

- a. Did the supervisor give to the employee forewarning or foreknowledge of possible or probable disciplinary consequences of the employee's conduct?
- b. Was the University's rule or managerial order reasonably related to (1) the orderly, efficient, and safe operation of the department's business, and (2) the performance that the supervisor might properly expect of the employee?
- c. Did the supervisor, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
- d. Was the University's investigation conducted fairly and objectively?
- e. During the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
- f. Has the department applied its rules, orders and penalties evenhandedly and without discrimination to all employees?
- g. Was the degree of discipline administered by the supervisor in a particular case reasonably related to (1) the seriousness of the employee's proven offense, and (2) the record of the employee in his service with the University?

#### **Section 4. Employer to Furnish Reason for Discharge**

The employer shall furnish, upon demand by any discharged permanent employee, a written, full, succinct, and complete statement of the reason for the discharge. In any case where the employee has received a warning letter, the warning letter shall constitute a sufficient statement of the reasons for discharge.

### **Section 5. Representation by the Bargaining Agent**

Each employee shall have the right to have a representative of the bargaining agent present during investigatory meetings when punitive disciplinary action is contemplated. It shall be the responsibility of the employee to ensure that the bargaining agent representative is notified and is present at any such discussion.

### **Section 6. Employee Assistance**

When a permanent employee's work performance is adversely affected by behavioral health problems (e.g., drug, alcohol dependency and emotional problems) that may be correctable through treatment or counseling, the employee may request help in identifying local community resources which can provide professional assistance. Employees who seek assistance will not have their job security or promotional opportunity jeopardized by the request for assistance. If the employee's work performance has not improved, and/or the employee fails to seek assistance, the employer may take progressive disciplinary action up to and including discharge.

### **Section 7. Right to Warning Letter**

A written warning letter may be issued to a permanent employee whose job performance or behavior is unsatisfactory. The bargaining agent shall receive a copy of all warning letters.

### **Section 8. Duration of Warning Letter Limited**

Employees have the right to have a warning letter removed from their personnel file if after a reasonable period of time the reason for the warning letter has been corrected. The first warning letter that an employee receives will not remain in the personnel file for longer than one (1) year unless there are repeated offenses or insufficient progress. Warning letters may be removed earlier than one (1) year by agreement of the Human Resources Director and the bargaining agent. If the first warning letter is to remain in the file for longer than six (6) months, the employee will be provided an interim written progress report by the supervisor within six (6) months from the issuance of the warning letter. Warning letters which are applicable to pending legal or quasi-legal proceedings may be retained in a separate file. Upon conclusion of the legal or quasi-legal proceeding, the warning letter shall be destroyed. Warning letters are subject to the grievance procedure.

### **Section 9. Means of Effecting Discharge**

Employees being discharged shall be notified in writing. A copy of such notice shall be given the bargaining agent.

### **Section 10. Protection of Discharged Employees**

The employer may not prevent or attempt to prevent, by word or writing of any kind, any discharged employee from obtaining any other employment. The employer may, however, inform by word or writing any other employer to whom the discharged employee has applied for employment, with a truthful statement of the reason for such discharge. (§ 39-2-802, Mont. Code Ann.)

### **Section 11. Discharge for Attachment or Garnishment Prohibited**

The employer shall not discharge or layoff any employee because of attachment or garnishment served on the employer against the wages of the employee. (§ 39-2-302, Mont. Code Ann.)

### **Section 12. Statutory Causes for Discharge**

Any employee who misrepresents the actual reason for charging an absence to sick leave or uses sick leave for unauthorized purposes may, upon substantiation of the charge by the employer, be discharged for sick leave abuse. (§ 2-18-618, Mont. Code Ann.) Any employee who uses or authorizes the use of any state owned or leased vehicle for personal or private use or for other than official purposes shall be summarily discharged from employment.

### **Section 13. Loss of Benefits Due to Discharge**

Any employee who is discharged or terminated from employment for reasons reflecting discredit on the employee shall be denied cash compensation for unused vacation leave. (§ 2-18-617, Mont. Code Ann.) Any employee discharged for abuse of sick leave shall forfeit the lump sum payment equal to one-quarter (1/4) of the pay attributed to the employee's accumulated sick leave. (§ 2-18-618, Mont. Code Ann.)

### **Section 14. Wages of Discharged Employee**

When an employee is discharged for cause, all unpaid wages are due and payable on the next regular payday for the pay period during which the employee was discharged or within fifteen (15) calendar days from the date of the discharge, whichever occurs first.

### **Section 15. Suspension or Disciplinary Layoff**

The employer may suspend an employee without pay for any period up to a maximum of ten (10) working days.

### **Section 16. Discharge Subject to Grievance Procedure**

Any controversy between the parties regarding discharge or disciplinary action may be pursued through the regular grievance procedure.

## **ARTICLE XI - SENIORITY AND LAYOFFS**

### **Section 1. Seniority Defined**

Seniority means a permanent employee's length of continuous service with the employing campus in the bargaining unit. The seniority date for all permanent employees shall typically be the most recent date of hire in a bargaining unit position. However, an employee's seniority date may be adjusted to reflect seniority credits earned prior to a transfer out of the bargaining unit in accordance with Subsection A.

Subsection A. Seniority shall cease to accrue if an employee is laid off, or if an employee is transferred or promoted to a position out of the bargaining unit. Upon the return to a bargaining unit position, it shall be the responsibility of the employee to inform the employer in writing of the employee's eligibility for recognition of prior seniority credits.

Subsection B. Seniority shall be revoked upon termination, promotion or transfer out of the bargaining unit in excess of one year, discharge for cause or retirement. Seniority is not transferable between campus units of the university system or between bargaining units.

### **Section 2. Seniority List**

Upon request, each campus shall make a seniority list available to the bargaining agent and employees.

### **Section 3. Seniority in Hiring**

When filling a vacant or newly-created position in the bargaining unit through a competitive recruitment process seniority shall be the determining factor where qualifications of applicants are substantially equal. Hiring recommendations for bargaining unit vacancies shall be reviewed by the human resources office prior to any job offer to insure compliance with the seniority provisions of this agreement.

### **Section 4. Notice and Selection of Employees for Layoff**

A copy of such notice will be provided to the bargaining agent. If qualifications are met, layoffs within the selected job title and budgeted department shall be in reverse order of seniority. The employer shall give at least thirty (30) calendar days notice to employees who are to be laid off.

### **Section 5. Transfer to Avoid Layoff**

Employees who are in a laid off status or who are scheduled for layoff may be transferred to a vacant position upon agreement of the employer and the employee and after notification to the union without compliance with this or any other provisions of the agreement.

### **Section 6. Scheduled Layoff**

An employee's employment may be temporarily discontinued at certain regularly scheduled times or intervals mutually understood to be an inherent condition of the employment. Upon expiration of the term specified, the employee shall be reinstated to employment as specified by the employment agreement.

### **Section 7. Recall to Former Position**

Employees shall be recalled to vacant positions within their former job titles and department in order of seniority. Employees will be eligible for such recall for one (1) year from the date of layoff. Employees who have extended their eligibility for participation in the layoff pool for one (1) additional year in accordance with Section 8 shall be eligible for recall for one (1) additional year. The laid off employee shall be notified by certified mail of any recall of employment. If the employee fails to communicate receipt of a recall to employment or an offer of reemployment within ten (10) working days from the date of receipt of the notice or offer, the employee shall be considered as having forfeited recall rights.

## **Section 8. Layoff Pool**

Permanent employees who have been notified of a layoff may submit an application to Human Resources to be placed in a layoff pool for recall purposes. Eligible employees must apply to the layoff pool within thirty (30) days from the date of written notification of layoff or their rights to the layoff pool shall be waived. Applications for the layoff pool will be active for one (1) year and may be extended for one (1) additional year by the employee renewing his/her application. Fixed-term employees are not eligible to be placed in a layoff pool.

Employees in the layoff pool may apply for any bargaining unit position for which they qualify. Whenever an employee in the layoff pool applies for a bargaining unit vacancy, hiring authorities must consider only employees in the layoff pool and significantly more senior employees who applied for the position prior to consideration of other applicants. If no significantly more senior employee applies for a bargaining unit vacancy hiring authorities must first consider employees in the layoff pool for open positions in the bargaining unit. Except for good cause, the hiring authority shall select an applicant from the layoff pool. Good cause includes but is not limited to the following: 1) The laid off employee does not have the necessary qualifications to be successful in the new position. In such cases the employee and union will be provided reasons for the non-selection, or 2) Where a significantly more senior employee has equal or better qualifications for the new position, seniority shall prevail.

An employee shall be allowed to decline one position and remain in the layoff pool. If an employee is offered a second position at the same or a higher salary as received in the position from which they were laid off and declines the position, the employee forfeits their right to remain in the layoff pool. If an employee who is placed in a position through the layoff pool does not satisfactorily complete a thirty (30) working day trial period, the employee may be returned by the employer to the layoff pool.

## **Section 9. Reductions in FTE Levels**

A reduction in the FTE level of a position is not considered a layoff and the provisions of this agreement concerning layoff do not apply.

A temporary reduction in FTE level is a reduction anticipated to last less than three months. An employee's FTE level may be temporarily reduced with the mutual understanding that such a

reduction is an inherent condition of employment.

Employees in positions which are scheduled to be reduced in FTE level by at least one quarter (.25 FTE) for three months or longer shall be given thirty (30) calendar days advance notice. A copy of such notice will be provided to the bargaining agent.

Permanent employees who have been notified that their position will be reduced in FTE level by any amount for three months or longer shall be eligible to elect layoff in lieu of a reduction in FTE level. Such employees must notify the employer of their election for layoff within seven (7) calendar days of the date of written notice of FTE reduction. Employees electing layoff in lieu of FTE reduction are eligible to apply for the layoff pool provided for in Article XI, Section 7, and must do so within thirty (30) days from the date of written notice of FTE reduction or their rights to the layoff pool shall be waived.

## **ARTICLE XII - VACANCIES AND PROMOTIONS**

### **Section 1. Notice of Vacancies**

The employer shall post and publish notice of all vacancies sufficiently in advance of the hiring date to afford all employees who are eligible to apply for the vacancy an equal opportunity to submit an application for the vacancy.

### **Section 2. Temporary Promotion**

An employee may be temporarily promoted to a position with a higher salary for reasons deemed appropriate by the appointing authority. The employee shall be notified in writing at the beginning of the assignment as to the reason for the temporary promotion, the anticipated duration and the amount of the temporary wage increase, if any. If an employee is temporarily appointed to another position, the employee's permanent position must be available for the employee's return should the employee not be made permanent in the position to which he/she was temporarily appointed.

### **Section 3. Job Change Encouraged Without Penalty**

It shall be the policy of the employer to openly encourage present employees to make application for new, different or more advanced positions for which they may be qualified, without

apprehension or concern about penalty or loss of their present position.

#### **Section 4. Prior to Change of Position**

No employee may be changed to a new or different position unless selected by means of an established EEO recruitment, reassigned to a position and the reassignment does not result in a vacancy for which a recruitment would be required, or promoted to the next step of an established career ladder.

#### **Section 5. Nepotism**

Nepotism is prohibited as defined by state law, a copy of which is attached in Addendum B. (§ 2-2-303, Mont. Code Ann.)

#### **Section 6. Possible Duration and Extent of Employment**

The anticipated duration of employment or expectation of continued employment is determined by whether the position is of an indefinite duration or a fixed term. The number of hours of scheduled work or extent of employment is determined by whether the position is full-time or part-time. The following define the types of available positions regarding duration and extent of employment.

##### **Subsection A. Part-Time Employees**

Any employee who works less than a regular forty (40) hour week is a part-time employee.

##### **Subsection B. Full-Time Employees**

Any employee regularly scheduled to work at least forty (40) hours per week is a full-time employee.

##### **Subsection C. Permanent Employee**

A permanent employee is one who has completed the probationary period in a permanent position.

##### **Subsection D. Fixed-term employee**

A fixed-term employee is one whose employment is not intended to be permanent and with no expectation of employment beyond the period specified and in no event to exceed a

period of one (1) year. No fixed-term position may be changed to a permanent position without a recruitment, but any fixed-term employee may apply for any permanent position for which a recruitment is being conducted. When such a recruitment is conducted, the announced qualifications for the permanent position shall not be expanded upon from the initial recruitment in order to tailor the position to the fixed-term employee. Fixed-term employment may be discontinued without cause, but at least five (5) working days of notice of discontinuance shall be given. Compensation for fixed-term employees shall be established in the same manner as other bargaining unit positions.

## **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

### **Section 1. Travel**

Travel policies, procedures and reimbursement shall be in accordance with state law and procedures.

Subsection A. When an employee is required to travel as a part of his/her duties, time spent in travel shall count as hours worked.

Subsection B. When travel is required outside the employee's normal working day, only those hours actually spent traveling shall count as hours worked. Hours actually spent traveling specifically exclude time spent on meals and time after arrival at destination and prior to departure not spent in the performance of duties.

Subsection C. Travel time does not include either the time required to travel from home to the usual work site or the time required to travel from the usual work site to home.

### **Section 2. Staff Participation in Governance**

The employer shall continue to grant non-academic membership on committees when in the best interest of the institution or when the function of the committee is affected with non-academic staff interests. Staff participation in governance shall not be regarded as an incursion into the area of exclusive representation which is the right of the bargaining agent. Nothing in this section requires the establishment of committees or the concurrence with any recommendations thereof.

### **Section 3. Employment Records**

Any employee shall be entitled, upon request, to see any of his/her official employee file. No information reflecting critically upon an employee shall be placed in the official file of the employee that does not bear either the signature or initials of the employee indicating that the employee has been shown the material or a statement by a supervisor that the employee refused to sign it. A copy of any such material shall be furnished the employee upon request.

### **Section 4. Copies of Agreement**

Upon final ratification and approval of this agreement, the employer shall prepare and make available to the bargaining agent a copy of the agreement. The union shall be responsible for providing copies of the agreement for employees and the employer for supervisors. The agreement is also available electronically and can be accessed from the Commissioner of Higher Education's, MPEA's or the campus human resources/personnel offices' web pages.

### **Section 5. Emergency Use of Health Service**

Any employee shall be allowed to use the Health Service, if available at the campus unit, for emergency treatment. The Health Service will be allowed reasonable charges for such service which shall be billed to the employee.

### **Section 6. Vehicle Registration and Parking**

All employees covered by this agreement shall be eligible to park in existing staff parking areas, provided however, that each employee shall register any vehicle parked on campus in accordance with applicable regulations. The employer may charge a registration fee per vehicle and may assess fines for violations of motor vehicle and parking regulations, or order the removal of vehicles parked in violation of regulations at the expense of the violator, and withhold the amount of any unpaid fines from wages (§ 20-25-312, Mont. Code Ann.)

### **Section 7. Protective Clothing or Uniforms**

If any employee is required to wear a uniform, protective clothing or any type of protective device, the employer shall furnish said items. The selection of the type and determination of the number as well as the means of maintenance of said items to be provided by the employer shall be the prerogative of the employer.

### **Section 8. Tools Provided**

Except for items personalized by size or custom of usage (e.g., tack or livery), the employer shall provide tools required for the performance of duties within the scope of employment.

### **Section 9. Outside Employment**

Any employee may engage in outside employment which does not interfere with the employee's job performance, which does not constitute a conflict of interest or does not involve use of the employer's property, facilities, authority or name.

### **Section 10. Contracting for Services**

It is the intent of the parties to preserve the work and job opportunities of the employees covered by this agreement. It is also, however, an obligation as well as a management prerogative of the employer to maintain the efficiency of the employer's operations and to determine methods and means by which those operations are to be conducted. The employer shall make every reasonable effort to retain the employees covered by this agreement and will not make arrangements to contract with any outside firm for any of the services ordinarily rendered by said employees which would jeopardize their continued employment without disclosure to the bargaining agent sufficiently in advance to accommodate discussion between the parties of the contemplated action. The employer shall not enter into any such contract for services unless it can be proven that said contract would result in increased efficiency of operations by way of obtaining the same services at less cost or additional services for the same cost, or unless it can be proven that such action is necessitated by financial exigency. The employer agrees it shall be a condition of any such contract for services which may displace employees covered herein, that the contractor shall offer employment to as many of said employees who would be displaced by said contract as the number of similarly qualified employees who shall be required by the contractor to effect performance of the contract. It is understood, however, that the employer may not require the terms of the contractor's offer of employment to be identical to or commensurate with those of the employee's contract with the employer. The provisions of this paragraph are subject to the grievance procedure and no work which would result in displacement of any employee within the bargaining unit shall be contracted prior to a final decision on any grievance filed under the terms of this contract.

## **Section 11. Safety of Working Conditions**

The employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, or methods, as are adequate to render the place of employment safe, and shall do everything reasonably necessary to protect the life and safety of employees. (§ 50-71-201, Mont. Code Ann.) No person shall remove, damage or refuse to use any safety device or safeguard, or interfere in any way with the use thereof or of any practice or method adopted for protection of employees. (§ 50-71-203, Mont. Code Ann.) Employees shall notify the supervisor and/or safety officer as soon as possible of any safety hazards incident to their employment. (§ 50-71-322, Mont. Code Ann.)

## **Section 12. Ethical Conduct and Prohibited Political Activities**

Public employees have a special obligation to carry out their duties for the benefit of the people of the state and to avoid taking actions that cause them to violate the public's trust. State law at §§ 2-2-101 through 2-2-304, Mont. Code Ann., includes several specific prohibitions and provides for significant penalties including fines and imprisonment for violators. Employees may also be subject to discipline for violation of public trust. Examples of prohibitions include but are not limited to: 1) using work time, facilities, equipment supplies, personnel or funds for private business purposes including any campaign activity persuading or affecting a political decision; 2) engaging in any activity, including lobbying on behalf of an organization of which the employee is a member while performing job duties 3) receiving two salaries as a public employee for work during overlapping hours; 4) accepting a substantial gift or economic benefit, or reward for an official action; 5) disclosing or using confidential information acquired in the course of official duties in order to further the employee's personal economic interests; 6) assisting any person for a fee or other compensation in obtaining any service, claim, license, or other economic benefit from the employer; 7) performing any official act directly and substantially affecting a business or other undertaking in which the employee has a substantial interest or is engaged as a consultant, representative or agent; 8) soliciting or accepting employment or engaging in meetings or negotiations to consider employment with a person who the employee regulates in their official duties without first giving notice to their supervisor, or 9) engaging in a substantial transaction for private business purposes with a person the employee inspects or supervises.

### **Section 13. Dependent Partial Tuition Waiver**

Subsection A. Permanent employees must be employed at least  $\frac{3}{4}$  time for five (5) or more consecutive years before being eligible for a dependent tuition waiver benefit. Employees who utilize the faculty and staff tuition waiver are not eligible for a dependent tuition waiver during the same academic term. Only one (1) dependent may utilize the dependent tuition waiver in an academic term. A dependent includes the employee's spouse or adult dependent, as defined in the MUS Employee Benefits Plan, and financially dependent children as defined by the Internal Revenue Code who are unmarried and under age 25.

Subsection B. The tuition waiver benefit for dependents shall be for 50 percent of the residential tuition. In no case may registration, course fees or any other mandatory or miscellaneous fees be waived. Dependents may utilize the tuition waiver benefit to take courses at a college of technology or in any other two-year or certificate programs and to obtain a first baccalaureate degree at any unit of the university system. Dependents may not use the tuition waiver benefit to attend law school or obtain a graduate degree. The tuition waiver does not apply to non-credit, continuing education or other self-supporting courses.

## **ARTICLE XIV - GRIEVANCE PROCEDURE**

### **Section 1. Grievance Definition**

A grievance is any controversy between the parties involving an alleged violation of a provision of this agreement. All grievances shall be resolved in accordance with the procedure set forth in this article.

### **Section 2. Step 1**

Within ten (10) days of the occurrence of the grievance an employee with a grievance shall discuss their grievance with their immediate supervisor. The immediate supervisor shall have five (5) days to respond to the grievance.

### **Section 3. Step 2**

If the grievance is not resolved informally at step 1, a formal grievance shall be presented in writing within five (5) days from receipt of the step 1 response to the personnel office or designated grievance officer. The personnel office or designated grievance officer shall have ten (10) days from receipt of the grievance to respond in writing.

### **Section 4. Step 3- Grievance Committee**

Within ten (10) days from receipt of the personnel office or designated grievance officer's response the bargaining agent may submit a written request to have the grievance heard by a grievance committee. Upon receipt of such request and grievance documentation from the Union, the Commissioner of Higher Education shall within 21 days appoint a committee comprised of three (3) members selected by management and three (3) members selected by the bargaining agent to hear the grievance. No employee of the unit from which the grievance originated may be selected by management or the bargaining agent to serve on the committee. The grievance committee shall conduct the hearing at the unit from which the grievance originated and shall arrive at a decision within ten (10) working days following the date upon which the grievance is heard by the committee. Any decision concurred in by a majority of the members of the grievance committee is final and binding and may not be appealed to arbitration.

The bargaining agent and the Commissioner of Higher Education may, by mutual agreement, bypass the grievance committee process. In such cases, the grievance shall, at the request of the bargaining agent, be submitted to arbitration in accordance with step 4.

### **Section 5. Step 4- Arbitration**

If the grievance committee is unable to arrive at a decision which is concurred in by a majority of committee members within ten (10) working days following the date of the grievance committee hearing, the bargaining agent may submit the matter to arbitration by giving written notice of intention to arbitrate to the campus personnel office and the Commissioner of Higher Education within ten (10) days from the date the committee decision was due. Upon receipt of the request to arbitrate the parties will initiate procedures to select an impartial arbitrator. If the parties are unable to agree upon an acceptable impartial arbitrator, the Federal Mediation and Conciliation Service shall be requested to provide a list of names of seven (7) potential arbitrators. Each party shall alternately strike names and the remaining name shall be the arbitrator.

Subsection A. The decision of the arbitrator shall be final and binding except that no arbitrator shall have the authority to add to, subtract from or modify the terms of this agreement.

Subsection B. Each party shall be responsible for the fees and expenses of presenting its own case. The cost of the arbitrator shall be shared equally between the parties. If one of the parties wants a transcript of the arbitrator proceedings, the party requesting the transcript shall pay the cost of such transcript.

Subsection C. Grievance Mediation

Upon mutual agreement, grievance mediation may be utilized by the parties prior to or in lieu of arbitration.

**Section 6. Rules of Grievance Processing**

Subsection A. Reference to days regarding time periods in this procedure shall refer to working days. A working day is defined as all week days which are not designated as holidays.

Subsection B. In computing any period of time prescribed herein, the date of the act, event or default for which the designated period of time begins to run shall not be included.

Subsection C. Time limits specified herein may be extended by mutual agreement of the parties involved at that step of the procedures.

Subsection D. Any grievance which is not filed or advanced within the time limits provided for herein shall be invalid and without further recourse.

Subsection E. Grievances concerning the Montana University Achievement Project (MAP) are excluded from the contractual grievance process. The sole and exclusive appeals process for MAP related grievances is that contained in the MAP Performance Development and Compensation Programs Guide.

Subsection F. An employee representative shall be allowed a reasonable amount of paid time (not to exceed two (2) hours for each grievance) to process written grievances and if their attendance is required, the actual time to appear at an arbitration hearing.

Subsection G. Exclusive Remedy In the event an employee files a complaint alleging unlawful discrimination or other unlawful conduct under procedures established by the Human Rights Division, Equal Employment Opportunity Commission, Office of Federal Contract Compliance Programs, Office of Civil Rights, the Board of Personnel Appeals, the Investigations Bureau of the Montana Department of Labor and Industry or the Federal Fair Labor Standards Office, the employer shall not be obligated to process a contractual grievance over a similar matter.

Subsection H. Written Grievances. Grievances presented in writing shall include the following specific information: complete statement of grievance including all facts on which grievance is based, specific contract provision violated, names of witnesses having knowledge of facts, specific remedy requested, and employee grievant's signature. Copies of relevant documents should be attached to the grievance.

## **ARTICLE XV - EFFECT OF ENTIRE AGREEMENT**

### **Section 1. Financial and Legislative Contingencies**

Should the employer not receive anticipated appropriations or revenues, those portions of this agreement which are contingent upon availability of financial resources may be opened for renegotiation by the employer.

### **Section 2. Conflict with Statute**

Throughout this contract, benefits provided to all state employees by statute are summarized. These benefits are changed from time to time by the legislature. The intent of the parties is that employees will receive benefits in accordance with current state statutes. If there is a conflict between statute and the agreement the statutory provision shall take precedence.

### **Section 3. Savings Clause**

Should any portion of this agreement be determined invalid or unenforceable by any court or other judicial or quasi-judicial body with authority to make such a determination, that portion of the agreement declared invalid shall be null and void, however, the rest of the agreement shall remain in full force and effect.

### **Section 4. Interim Amendment**

Each party hereby waives the right to insist that the other party bargain collectively during the life of this agreement with respect to any questions of wages, hours, fringe benefits or other conditions of employment except as provided for in Sections 1 and 4 of this article. Changes to this agreement may be negotiated only upon mutual agreement of the parties to this agreement. Any agreed to changes shall be made effective upon any date agreed upon by both parties and shall expire upon the expiration of this agreement. In order for any changes to be effective, they must be set down in writing, and approved and signed by the bargaining agent and the Commissioner of Higher Education.

## **ARTICLE XVI - TERM OF AGREEMENT**

### **Section 1. Contract Term**

This contract shall be in effect from ten (10) working days after the date of ratification or July 1, 2011, whichever is later, and shall continue until and including June 30, 2013. This entire agreement shall be considered as renewed from year to year after June 30, 2013, unless either party to this agreement notifies the other party in writing by February 1, 2013, of its desire to modify or terminate this agreement.

## **ADDENDUM A - WAGES**

### Wages:

- a. Effective October 1, 2011, members hired on or before September 30, 2011 shall receive a base pay increase of one (1) percent plus an annualized amount of \$500 added to the base salary. The annualized amount is prorated based on FTE.
- b. Effective October 1, 2012, members hired on or before September 30, 2012 shall receive a base pay increase of two (2) percent plus an annualized amount of \$500 added to the base salary. The annualized amount is prorated based on FTE.
- c. Employees will continue to be eligible for career ladders, in-range progression pay, and strategic pay increases in accordance with pay guidelines.

## ADDENDUM B - STATUTES

**2-2-303. Agreements to appoint relative to office unlawful.** It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to affinity within the second degree.

**2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment.

**2-18-612. Rate earned.** (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

<u>Years of employment</u>	<u>Working days credit</u>
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

**2-18-614. Military leave considered service.** A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

- (1) having been ordered on active duty with the armed forces of the United States;
- (2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
- (3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

**2-18-615. Absence because of illness not chargeable against vacation unless employee approves.** Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

**2-18-616. Determination of vacation dates.** The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency with regard to the best interest of the state, any county or city thereof as well as the best interests of each employee.

**2-18-617. Accumulation of leave -- cash for unused -- transfer.** (1)(a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

**2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have

worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits he had accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, he is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts his accumulated sick leave. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(9) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave.

**2-18-619. Jury duty -- service as witness.** (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

**39-2-104. Mandatory leave of absence for employees holding public office -- return requirements.** (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their

positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

**2-18-621. Unlawful termination.** It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is a collective bargaining agreement to the contrary applicable.

**10-1-604. Leave of absence of public employees attending training camp or similar training program.** A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

**49-2-310. Maternity leave -- unlawful acts of employers.** It shall be unlawful for an employer or his agent to:

- (1) terminate a woman's employment because of her pregnancy;
- (2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;
- (3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or
- (4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

**ADDENDUM C - FOR THE UNIVERSITY OF MONTANA-MISSOULA**

The first thirty (30) working days for employees promoted from one position covered by this agreement to another shall be a trial period for the employee and supervisor to determine suitability of the job fit. If the promoted employee does not satisfactorily complete the thirty (30) working day trial period in the judgment of the employee or the supervisor, the employee shall be returned to the previous position or to a comparable position.

## **MOU - SYSTEM-WIDE LABOR MANAGEMENT COMMITTEE**

A system-wide Labor Management Committee will begin meeting in December 2009. The committee will have equal numbers labor and management representatives from each of the following campuses: MSU-Bozeman, MSU-Billings, MSU-Great Falls College of Technology, UM-Missoula, UM-Helena College of Technology, UM-Western, and Montana Tech.

At a minimum, the committee will address the following issues:

- Pay Rules/Guidelines including:
  - a. Equal access/opportunities for staff in all departments and all job titles
  - b. Flexibility within a framework of consistency
  - c. Review process for assigning job titles/classifications
  - d. Method for updating entry pay ranges
  - e. Communication and training regarding pay options
  - f. Strategic pay
  - g. Performance review
- Living Wage
- Longevity Pay Methodology

## **MOU - SENIORITY**

The parties recognize that the best interests of an employee will be served by placing him/her in a position for which he/she is qualified. In the event that a reduction-in-force results in the transfer of a more senior employee into a position for which the employee may not be qualified, the following procedure will be used:

- 1) the selection criteria included in the most recent vacancy announcement (within the last two (2) years) will be used as the basis for determining the job requirements;
- 2) the affected employee will prepare an application, presenting his/her qualifications against the established job requirements;
- 3) if it appears that the more senior employee is not able to meet the qualifications and skills of the new position, Personnel will contact the Union to review the situation and attempt to reach mutual agreement on the employee's qualifications for the position;
- 4) if mutual agreement cannot be achieved, the employee will be given a thirty (30) working day trial period which may be extended by mutual agreement, at the end of which the employer will assess the employee's progress and determine whether to retain the employee in the position or place him/her in a layoff pool. At any time during the trial period, the employee may opt to enter the layoff pool.

## **MOU -- REDUCTION IN FORCE**

(Expires June 30, 2013)

In addition to provisions of the current collective bargaining agreement, the following terms and conditions are in place through June 30, 2013:

- If a layoff is necessary within a budgeted department, management will communicate the necessity of the layoff, and any employee of the budgeted department in the same job title as the position scheduled for elimination may volunteer to take the layoff. Management will consider the volunteer request before deciding whether to grant the request or administer the layoff under the terms of the CBA. In the event the request for voluntary layoff is accepted by management, the layoff will be treated as a non-voluntary layoff for purposes of all applicable benefits and CBA provisions.
- Management will provide greater than 30 days notice of any layoff whenever reasonably possible, however, in all cases shall provide at least a minimum of 30 days notice.
- Employees who have received notice of layoff may request paid release from work duties (not charged to annual vacation leave or accrued compensatory time) to conduct a reasonable amount of job search tasks (e.g., an appointment at a job service office, a scheduled job interview, limited amount of work on job applications, etc.) Management will grant the request with consideration of how much release time to grant based on department needs, employee needs, job type, workload, budget, etc.
- Fixed term and temporary staff employees within the budgeted department experiencing the need for staff layoff(s) shall be eliminated prior to a layoff of a bargaining unit member. Exceptions to this provision will be permissible if a fixed term and/or temporary staff employee possesses unique knowledge and/or skills required to complete a specific project, duty, or responsibility.
- Any bargaining unit member who has been notified of layoff and such layoff is intended to take effect while the employee is utilizing the MUS staff tuition waiver or dependent partial tuition waiver shall continue their eligibility the remainder of the semester.

## MOU – JOB CLASSIFICATION REVIEW

This Memorandum of Understanding is for a two-year pilot project, beginning July 1, 2011, and ending June 30, 2013, to be reviewed by the parties after two years, with extension or modification possible by mutual agreement:

In the event that an employee believes that his or her duties are significantly different from those outlined in the employee's official Role Description, the employee may request a position review. An updated Role Description shall be completed outlining the duties and responsibilities required of the position. The employee and the supervisor must sign the updated Role Description prior to submitting to the human resource office verifying the duties required of the position. At any time during the process, either the employee or supervisor may request human resource office involvement in updating the role description. In the event the position review results in a higher classification, the employee's pay rate shall increase in accordance with the Montana University System Staff Compensation Plan Pay Guidelines.

When a classification review results in no change to the position title or a demotion, within 30 days of receiving the decision, the employee may request another review of the documentation and information about the position duties by the campus human resources office. This subsequent analysis may involve additional information sharing by the employee or supervisor about the position duties and necessary knowledge, skills and abilities.

Within 30 days of receiving the original or subsequent decision, the employee may contact MPEA to request further analysis of their classification.

When contacting MPEA, the employee will be asked to share information about their position, including the current role description, changes to work assignment, and timeline of request for position review. A completed questionnaire may be required.

MPEA will review information provided and may contact the campus Human Resources Office for informal resolution or staff in the Office for the Commissioner of Higher Education (OCHE) to request analysis by a review panel.


Upon receiving an analysis request from MPEA, OCHE staff will organize a review panel consisting of two human resources representatives from campuses other than the employing campus. The panel will consult with the campus human resources representative who made the title determination, an MPEA representative, and an OCHE representative.

The panel will conduct a review and analysis of submitted documentation, consult with the original reviewer, and review any additional information deemed necessary by the panel.

The panel will make a determination on the appropriate title for the position. This decision will be communicated to the employee, MPEA representative and the campus human resources office. The decision reached by the review panel is final and binding.

DATED this 17<sup>th</sup> day of October, 20 11.

FOR THE  
MONTANA UNIVERSITY SYSTEM:

  
\_\_\_\_\_  
Sheila M. Stearns  
Commissioner of Higher Education

FOR THE  
MONTANA PUBLIC  
EMPLOYEES ASSOCIATION:

  
\_\_\_\_\_  
Quint Nyman  
Executive Director

  
\_\_\_\_\_  
Kevin McRae  
Associate Commissioner for  
Communications and Human Resources

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