

# Memorandum of Understanding

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_, 2007 by and between the Board of Regents of the Montana University System (the "BOR") on behalf of The University of Montana (the "University") and The University of Montana Foundation (the "Foundation").

## RECITALS

The BOR is responsible for supervising, coordinating, managing and controlling the Montana University System, including overseeing the mission, leadership, and operations of the University. As part of its responsibilities the BOR is responsible for the employment, compensation, and evaluation of all University employees including the president of the University

The Foundation was organized and incorporated in 1951 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University and provide opportunities for students and a margin of institutional excellence unavailable with state funds.

The Foundation is dedicated to assisting the University in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the University.

As stated in its articles of incorporation, the Foundation is a separately incorporated 501 (c) (3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University, soliciting cash, securities, real and intellectual property, and other private resources for the support of the University and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

Furthermore, in connection with its fund-raising and asset-management activities, the Foundation retains personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

### **Section 1 Foundation Name, Seal and Logotype**

Consistent with its mission to help to advance the plans and objectives of the University, the Foundation is granted the use of the name The University of Montana Foundation; however, the Foundation will operate under its own seal and logotype and shall not use the University seal or other identifying marks in the promotion of its business and activities.

### **Section 2 The Foundation's Relationship to the University**

The Foundation's board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

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

The Foundation is responsible for the employment, compensation, and evaluation of its employees, including the Foundation president and chief executive officer.

The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the University and will either transfer a percentage of those funds annually to the institution in compliance with state law and University policies or reimburse appropriate presidential expenditures. All such expenditures must comply with the I.R.S. 501 (c) (3) code and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audit.

### **Section 3 The University's Relationship to the Foundation**

The University President is responsible for communicating the University's priorities and long-term plans, as approved by the BOR, to the Foundation.

The BOR and the University recognize that the Foundation is a private corporation with the authority to keep all records and data confidential consistent with the law.

The President and Chief Executive of the Foundation shall be included as a member of the University President's cabinet and senior administrative team.

The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.

The President of the University shall serve as an ex-officio, non-voting member of the Foundation board and shall assume a prominent role in fund-raising activities.

The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.

#### **Section 4 University Responsibilities**

4.1 Direct Compensation. In consideration for Foundation services including but not limited to the responsibilities listed in Section 5 (Foundation Responsibilities), the University will provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated on a triennial basis (or more frequently if so agreed by both parties) by the end of March prior to the fiscal year in which the compensation is to be paid. The compensation and payment dates for each of the fiscal years immediately subsequent to the date of this agreement are included as Attachment A.

4.2 Development Officer Cost Sharing. The University shall share, generally on an equal basis, the salary and cost of employment benefits of development officers assigned to serve particular units of the University. The cost sharing arrangement for each such development officer position shall be funded from funds held by the Foundation for use at the discretion of the unit served (or if necessary, the President of the University). The arrangement shall be evidenced by an Development Officer Cost Sharing Memorandum of Understanding in the form included as Attachment B.

4.3 Office Space. The University shall lease adequate office space to the Foundation under the terms of a separately negotiated, fair market Lease Agreement on mutually acceptable terms.

4.4 In-kind Services. In consideration of Foundation services, the University will also provide the following in-kind support, including but not limited to the following.

The University will store the data related to the BANNER database containing both (a) the Foundation's donors and prospective donors and (b) the alumni records maintained by the University of Montana Alumni Association (the UMAA). This data will be stored by the University' Information Technology Office on University-owned hard drives used exclusively by the Foundation and UMAA. The BANNER application forms will be stored on a Foundation-owned server housed and maintained by the University.

The University will store the data [and related operating system] related to the BANNER data mart used by the Foundation to provide reporting on its own operations as well as UMAA's database related activities. This data will be stored on a Foundation-owned hard drives used exclusively by the Foundation housed and maintained by the University.

The University will provide database management services related to the above. The Foundation reserves the right to contract third-part database administration or programming services.

The University will upgrade Banner and Oracle software upgrades to the databases supporting the Foundation and UMAA in a reasonable timeframe after these upgrades become available.

The University will provide the Foundation with access to the BANNER and BANNER data mart data, as well as internet access and use of the University email system.

The University will provide regular maintenance, data backups, security and recovery related to these databases in accordance with accepted industry best practices.

It is understood that the Foundation may request services in addition to those listed above and that the University may elect to charge the foundation for those services at a mutually agreed upon rate.

4.5 Alumni Records. The University shall provide the Foundation with access to the alumni records as maintained by UMAA. The Foundation shall not release or otherwise use these records for any purpose outside of that expressly outlined in this Memorandum of Understanding.

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

## **Section 5 Foundation Responsibilities**

### 5.1 Fund-Raising.

## ITEM 135-1019-R0107

In a coordinated and cooperative effort with the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University, each as established by the University.

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

The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts.

The University recognizes that the Foundation bears major responsibility for fund-raising. University representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.

The University President will work in conjunction with the leadership of the Foundation board and the Foundation president to identify, cultivate, and solicit prospects for private gifts.

The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation board of directors and the governmental agency.

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

### 5.2 Asset Management.

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

The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

5.3 Fund Administration and Distribution.

The Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements.

The Foundation's disbursements on behalf of the University must be reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.

When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate documentation.

5.4 Foundation Funding and Administration

The Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

The Foundation has the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift taxes, to support its operations.

Except as outlined in Paragraph 4.2 above, the Foundation, at its own expense, will provide office space (pursuant to the terms of the Lease Agreement referenced in Paragraph 4.3 above), computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies of its annual report, and other information that may be publicly released.

5.5 Other Responsibilities.

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

With the explicit approval of the Foundation board, the Foundation may from time to time serve as an instrument for entrepreneurial activities for the University including but not limited to the purchasing, developing, or managing real estate for University, or University-related expansion.

The Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue with no direct connection to a University purpose.

**Section 6 Other Matters**

This Memorandum of Understanding is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities. To ensure effective achievement of the items of the agreement, the University and the Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

Consistent with provisions appearing in the Foundation’s bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501 (c) (3) organization, the Foundation will transfer its assets and property to the University.

The Recitals are incorporated into this Memorandum by this reference.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS Memorandum of Understanding to be executed by their duly authorized offices as of the day and date first above written.

BOARD OF REGENTS OF THE MONTANA  
UNIVERSITY SYSTEM

THE UNIVERSITY OF MONTANA FOUNDATION

\_\_\_\_\_  
President  
The University of Montana

\_\_\_\_\_  
President & Chief Executive Officer  
The University of Montana Foundation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment A**

**Memorandum of Understanding Dated \_\_\_\_\_, 2007**

**Direct Compensation Agreement per Section 4 (University Responsibilities)**

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Further to Section 5 of the Memorandum of Understanding of \_\_\_\_\_, 2007 between the Board of Regents of the Montana University System on behalf of The University of Montana (the “University”) and The University of Montana Foundation (the “Foundation”), the direct compensation to be paid by the University to the Foundation shall be as follows:

<u>Fiscal Year Ending June 30, 2008</u>		<u>Fiscal Year Ending June 30, 2010</u>	
Due on July 1, 2007	\$100,000	Due on July 1, 2009	\$ 90,000
Due of October 1, 2007	100,000	Due of October 1, 2009	90,000
Due on January 1, 2008	100,000	Due on January 1, 2010	90,000
Due on April 1, 2008	100,000	Due on April 1, 2010	90,000
Total for FY 2008	\$400,000	Total for FY 2010	\$360,000

<u>Fiscal Year Ending June 30, 2009</u>	
Due on July 1, 2008	\$ 95,000
Due of October 1, 2008	95,000
Due on January 1, 2009	95,000
Due on April 1, 2009	95,000
Total for FY 2009	\$380,000

AGREED this day by;

BOARD OF REGENTS OF THE MONTANA  
UNIVERSITY SYSTEM

THE UNIVERSITY OF MONTANA FOUNDATION

\_\_\_\_\_  
President  
The University of Montana

\_\_\_\_\_  
President & Chief Executive Officer  
The University of Montana Foundation

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Attachment B**

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**Cost Sharing Memorandum of Understanding**  
**Development and Constituent Alumni Relations Positions**  
[DATE]

The University of Montana Foundation is an independent, non-profit, tax-exempt organization organized to support The University of Montana through private support. The UM Foundation employs and directly supervises all development personnel who are responsible for raising funds for the benefit of the University. In order to dedicate a UM Foundation staff member (DOD) to provide fund raising, advancement and/or constituent alumni relations to a particular unit within the University, the UM Foundation, The University of Montana, and the [UNIT TO BE SERVED] agree to the following terms.

1. The University will reimburse the UM Foundation for ½ of the salary and benefits of the wage line dedicated to the constituent alumni relations or advancement portion of a particular school or program on campus. In addition, the University will reimburse the UM Foundation for development personnel travel and travel-related expenses when such expenses are incurred on behalf of the program along with paying other direct expenses such as phone, office space, supplies, and reasonable clerical support for these activities. Memoranda of understanding will be signed between the programs and the Foundation and are attached to this document.
2. In all cases, constituent alumni activities will be coordinated with the [DEAN OR PROGRAM OR DEPARTMENT HEAD], which has responsibility for the overall institutional alumni relations for the campus.
3. The UM Foundation will pay, solely with UM Foundation resources, for the fund raising portion of the DOD's salary, which is ½ of the DOD's salary and benefits for the wage line dedicated to this program. The UM Foundation will assume direct responsibility for paying the full cost of the DOD's salary and benefits, as well as DOD fund raising activities, subject to the reimbursement obligation by the University, through the program, set forth in Paragraph 1 above.
4. The DODs will report to the UM Foundation VP for Development, with a strong dotted reporting line to the dean/director or vice president of the unit in which they are operating. In addition, the Foundation VP for Development will coordinate with the Executive Director of the UM Alumni Association. The DOD will reside within the unit or within the Foundation depending on the circumstances of the unit. The dean/director will be involved in the hiring of the DOD and the formulation and approval of the annual plan and related budget to be executed by the DOD. The dean/director will also participate in the yearly written performance evaluation of the DOD, with comment from the Executive Director of the Alumni Association. In the event that other personnel actions involving the DOD are required in between yearly evaluations, the VP for Development will consult with the dean/director and the Executive Director of the Alumni Association prior to taking action.
5. This MOU will be renewed annually, subject to mutually agreeable terms, conditions and modifications. Termination of the agreement can be made with a 30 day notice in writing by either party.

\_\_\_\_\_  
President & CEO  
UM Foundation  
Date:\_\_\_\_\_

\_\_\_\_\_  
President  
The University of Montana  
Date:\_\_\_\_\_

\_\_\_\_\_  
DEAN OR PROGRAM DIRECTOR  
[UNIT SERVED]  
Date:\_\_\_\_\_