

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

THE MONTANA UNIVERSITY SYSTEM

AND

THE INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL #400

JULY 1, 2015 TO JUNE 30, 2017

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PREAMBLE

This Agreement is made and entered into by and between the Montana University System with units at Missoula, Bozeman, Butte, and Dillon, Montana, hereinafter referred to as the Employer, and Local 400 of the International Union of Operating Engineer, hereinafter referred to as the Bargaining Agent, and is for the purpose of mutually establishing the rights of the parties and the terms and conditions of employment of all of those employees covered by this agreement, and the parties hereto mutually agree as follows.

ARTICLE I. CONTRACT TERM AND NEGOTIATION SCHEDULE

Section A. Contract Term

This contract shall be in full force and effect from the date of July 1, 2015, to and including June 30, 2017, and shall be considered as renewed from year to year thereafter unless either

party to this agreement notifies the other party, in writing, in accordance with the following negotiation schedule, of its desire to modify or terminate this agreement.

#### Section B. Negotiations Schedule

Either party desiring to modify or terminate the agreement must notify the other in writing by March 31, 2017. Pre-budget negotiations may commence upon mutual agreement.

#### Section C. Legislative Contingencies

In the event the University System budget request is appropriated by the legislature in the amount requested, this agreement shall remain in full force and effect. Should the appropriation be less than the request, this agreement may be opened for renegotiation by the Employer as to any portion thereof the performance of which is contingent upon availability of financial resources. Should the legislature alter or amend a statutory provision contained in this agreement, the agreement may be opened for renegotiation by either party as to those clauses of the agreement affected by the legislative action.

### ARTICLE II. SAVING 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, the rest of the agreement shall remain in full force and effect and either of the parties may request immediate negotiations to seek agreement on a mutually-satisfactory replacement for that invalidated or unenforceable portion.

### ARTICLE III. INTERIM AMENDMENT

Either the Bargaining Agent or the Employer may request a meeting for the purpose of negotiating changes in this agreement during the effective period thereof, and upon mutual agreement of the parties, changes may be negotiated and made effective upon any date agreed upon by both parties subject to appropriate ratification by the bargaining unit and the Board of Regents.

### ARTICLE IV. 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 until the provisions of the article on grievance and arbitration have been fulfilled.

## ARTICLE V. NONDISCRIMINATION

### Section A. Cooperative Effort

The Employer and the Bargaining Agent agree that they will work cooperatively to assure that all employees have equal employment opportunities.

### Section B. Employer Obligation

The Employer agrees that it will not refuse employment to any person, or bar such person from employment, or discriminate against such person in compensation, or in a term, condition, or privilege of employment because of such person's political beliefs, race, religion, color or national origin, or because of age, physical or mental disabilities or sex when the reasonable demands of the position do not require an age, physical or mental disability or sex distinction.

### Section C. Bargaining Agent Obligation

The Bargaining Agent agrees that it will not exclude or expel any person from its membership, apprenticeship or training program because of such person's sex, age, physical or mental disability, race, religion, color or national origin, nor will the Bargaining Agent discriminate in any way against any member of or applicant to the Bargaining Agent, organization or applicant to or employee of the Employer.

## ARTICLE VI. RIGHTS OF THE BARGAINING AGENT

### Section A. Representation and Unit Definition

#### 1. Recognition.

The Employer recognizes the Bargaining Agent as the sole and exclusive representative of those employed in classifications within the bargaining unit for purposes of bargaining with the Employer regarding terms and conditions of

employment and representing the interests of those employees consistent with the terms of this agreement. Classifications and job titles, mutually agreed to be within the bargaining unit are in the attached addendum designated by the appropriate university unit.

2. Excluded Employees.

Temporary and student employees shall be excluded from this agreement so long as such employment will not result in any reduction in the number of persons employed in the bargaining unit or in the number of regular hours of employment of any employee in the bargaining unit.

However, any temporary employee who receives a rate of pay established by this agreement for 30 or more calendar days shall, as a result of continued employment, pay the Bargaining Agent an amount equal to the initiation fee and/or monthly dues of the Bargaining Agent or a service fee in lieu of dues as a contribution toward the administration of this agreement. The Employer shall notify the employee and the Bargaining Agent when the temporary employee has reached the 30 calendar days of employment. The employee shall have seven calendar days from the receipt of notice to comply with this requirement or the employee shall be discharged.

Section B. Bargaining Agent Security

1. Payment of Dues or an Equivalent Contribution.

a. Condition of Continued Employment.

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 the 30 calendar days of the effective date of this agreement shall, as a condition of continued employment, pay to the Bargaining Agent an amount equal to the initiation fee and/or monthly dues or a service fee in lieu of dues to the Bargaining Agent as a contribution toward the administration of this agreement. New employees shall be allowed 30 calendar days after employment in which to comply with this requirement.

Any employee who fails to comply with this requirement shall be discharged by the Employer within seven calendar days after receipt of written notice from the Bargaining Agent. (Mont. Code Ann. § 39-31-401)

b. Employee's Rights To 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.

c. Exemption from Dues.

No employee who is a member of a bona fide religious sect, or division thereof, the established and traditional tenets or teachings of which opposes a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment, if such employee pays, in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments, to a non-religious, non-union charity designated by the labor organization. Such employee shall furnish to such labor organization written receipts evidencing such payments; and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would non-payment of dues, initiation fees or assessments under this agreement.

A public employee desiring to avail himself/herself to the right of non-association with a labor organization as provided in this subsection shall make written application to the chairperson of the Board of Personnel Appeals. Within ten days of the date of receipt of such application the chairperson shall appoint a committee of three consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor

organization in question, and a member of the public at large who shall be the chairperson. The committee shall, within ten days of the date of its appointment, meet at the locals of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of non-association with such labor organization. The committee's decision shall be made in writing within three days of the meeting date and a copy thereof shall be forthwith mailed to such public employee, labor organization and the chairperson of the Board of Personnel Appeals. (Mont. Code Ann. § 39-31-204)

2. Employee Representative of Bargaining Agent.

a. Appointment of Employee Representative of Bargaining Agent.

The Bargaining Agent shall have the right to appoint an employee representative in designated departments 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. Said representative 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 performance of the employee's normal duties.

b. Bargaining Agent Representative Leave.

The Employer may grant reasonable leaves of absence without pay to one or two employees whenever required in the performance of duties as "duly authorized representatives of the Bargaining Agent." "Duly authorized representatives" means members or regularly-constituted committees and/or officers of the Bargaining Agent.

c. Bargaining Pool Leave.

Unless work requirements 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 may be granted reasonable leaves of absence with pay to conduct union business provided such time is compensated from the bargaining pool. It is the employee's responsibility to account for such leave on their time sheet.

A bargaining pool shall be established at each campus by each employee having the right to donate eight hours annually of his/her 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 or officers. A list of members of regularly-constituted committees and/or officers of the Bargaining Agent will be supplied to the personnel director or other appropriate official by the Bargaining Agent.

3. Upholding Bargaining Agent Principles.

No employee shall be discharged or discriminated against for upholding Bargaining Agent principles that constitute protected activity under the Collective Bargaining Act.

4. Representation by Bargaining Agent.

Each employee covered by this agreement shall have the right to have a representative of the Bargaining Agent present when disciplinary action is contemplated or when an employee's violation of Article XIV, Section B.10, may result in discharge. It shall be the responsibility of the employee to ensure that the Bargaining Agent representative is notified and is present at any such discussion.

5. Rights to Notice and Communication.

a. Notice of Changes in Bargaining Unit.

In addition to other requirements set forth elsewhere in the agreement, the Employer shall inform the Bargaining Agent of the following:

(1) New Hires.

The Employer shall furnish a monthly list to the Bargaining Agent of the names, date of hire and place of work of new employees in the

bargaining unit. A copy of the appropriate boiler's license of each new employee will also be furnished the Bargaining Agent.

(2) Discharges.

Notice of the intent to discharge any employee within the bargaining unit for any reason other than those in Article XIV, Section B.10, shall be given by the Employer to the Bargaining Agent prior to the discharge.

(3) Change in Job Titles or Classifications.

Notice of any intent to add or delete classifications or job titles shall be given by the Employer to the Bargaining Agent. No employee shall be reclassified or reallocated to a lower classification until the Employer has notified the Bargaining Agent sufficiently in advance to allow comment or appeal.

b. Visiting Work Areas.

The authorized representatives of the Bargaining Agent may visit members of the bargaining unit in work areas during work hours. Any such visit may not unduly disrupt work in progress.

c. Bulletin Boards

The Bargaining Agent shall have the right to use specified bulletin boards and regular posting areas for posting of official business notices.

d. 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.

e. 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 in accordance with campus regulations.

f. Copies of Contract.

Upon final ratification of this contract, the Employer shall prepare a copy of the agreement and send it to the Bargaining Agent. Employees may access the agreement electronically or may request a copy from the Employer or the Bargaining Agent.

g. Job Descriptions.

Upon request, employees will be given a copy of their job description and will be provided an opportunity to discuss their job description with their supervisor. When significant additions or changes in the job duties or responsibilities of bargaining unit positions occur the Bargaining Agent shall be allowed input regarding these changes.

## ARTICLE VII. 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 such areas 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, 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; and
7. establishing the methods and processes by which work is to be performed.

(Mont. Code Ann. § 39-31-303)

## ARTICLE VIII. TYPES OF AVAILABLE EMPLOYMENT

### Section A. Student Employees

In keeping with the federal and state policies of providing employment for students to provide economic opportunity to obtain further education, and in order to make available to students the benefits of state and federal work study and financial aid programs, the Employer shall continue to employ students. Any person who regularly registers for credit in timely pursuit of a degree shall be regarded as a student during the summer when not registered as well as during those regular quarters during which registered so long as the student remains academically qualified to register and has not withdrawn from student status. To assure compliance with compensation maximums and other requirements incident to federal programs, student employees shall be compensated consistent with the compensation schedule administered by the Financial Aid Office and shall not be hired into any position which would result in the displacement of any regular non-student employee. A student may be regarded as a "student employee" only so long as the employment of the student is "temporary" as opposed to "permanent." Any student who is employed in a "permanent" 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 as a temporary employee on a "full-time" basis for 700 or more hours, and is doing work within the position description of a classified position within a bargaining unit, or doing work which is within the described scope of work of a bargaining unit, shall be required, as a condition of continued employment, to pay the equivalent of initiation fee and/or monthly dues to the Bargaining Agent in the same manner as any other non-student temporary employee as provided in Article VI, Section A.2, of this agreement.

### Section B. Possible Duration and Extent of Employment

The anticipated "duration" of employment or expectation of continued employment is determined by whether the position is "permanent" or "temporary." 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.

1. Permanent Employee.

A permanent employee is one who holds a permanent position for which a budget line item, job title, and position number have been approved. The employment of the permanent employee is of unlimited duration and once the probationary period has been served may not be discharged without cause.

2. Temporary Employee.

A temporary employee is one whose employment is not intended to be permanent and is limited by an appointment for a specified time period or on a daily, weekly, or monthly basis with no expectation of employment beyond the period specified. No temporary employee may be changed to the status of a permanent employee but any temporary employee may apply for any permanent position for which a recruitment is being conducted. Temporary employment may be discontinued without cause, but at least five working days of notice of discontinuance shall be given those employed for a specified term or on a monthly basis. Temporary employment must be consistent with the classifications and titles as defined in this contract and paid consistent therewith. Temporary positions are subject to all collective bargaining requirements after 30 calendar days of employment.

3. Full-Time Employee.

Any employee regularly scheduled to work at least 40 hours per week is a full-time employee. Full-time employees may be either permanent or temporary.

4. Part-Time Employee.

Any employee who works less than a regular 40 hour week is a part-time employee. Part-time employees may be either permanent or temporary.

## ARTICLE IX. RECRUITMENT PRIOR TO EMPLOYMENT OR CHANGE OF POSITION

### Section A. Prior to Initial Hiring

No person may be hired by the Employer unless selected by means of an approved recruitment procedure and no person may be considered as an applicant, or employed, who does not have the appropriate qualifications for the position.

#### Section B. Prior to Change of Position

No employee may be changed to a new or different position or classification unless: selected by means of an approved open recruitment, or reassigned to a previously non-existent position or classification 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 C. Notice of Vacancies

The Employer shall post and publish notice of all job vacancies sufficiently in advance of the hiring date to afford all employees an equal opportunity to make application for the position. Posting and publication of notice of vacancy shall be accomplished in a manner consistent with the requirements of the Employer's nondiscriminatory recruitment procedure.

#### Section D. 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. There shall typically be a 30 calendar day trial period after an employee voluntarily changes from one position covered by this agreement to another position covered by this agreement. During the trial period, the employee may be returned to the former position and salary at either the Employer's or the employee's request. If an employee will not be allowed the option to return to the former position, the employee must be notified in writing prior to leaving the former position. The employee's seniority shall not be modified as a result of the trial period. An employee who returns to a former position during the trial period does not obtain the right to bump an employee to avoid layoff by virtue of having served in another classification for 30 or less days.

#### Section E. Preference in Employment

1. Veterans.

The Employer will not discriminate against any employee or applicant for employment because he/she is a military veteran in regard to any position for which the employee or applicant for employment is qualified. The Employer will take affirmative action to employ, advance in employment and otherwise treat qualified veterans without discrimination based upon their disability or veterans status.

2. Seniority.

Where qualifications of applicants are equal in other respects an employee with seniority shall prevail.

Section F. Nepotism

Nepotism is prohibited as defined by state law (Mont. Code Ann. § 2-2-302), a copy of which is included in Addendum D.

ARTICLE X. TERMS AND CONDITIONS OF EMPLOYMENT

Section A. Probationary Period

It is the policy of the Employer to employ qualified personnel whose ability to perform the services for which they are hired is not contingent upon additional education or training. The first three months of employment of a newly-hired employee into a full-time permanent position shall be a period of probation. This time may be extended an additional three months upon written notice to the probationary employee and the Bargaining Agent. At any time during the period of probation, the employee may be discharged without any showing of cause and without a warning letter and shall not have access to the grievance and arbitration procedure. During the period of probation, the ability of the employee to perform the duties and responsibilities incident to the position shall be evaluated by the supervisor who shall have the responsibility for recommending the employee either for continuance as a permanent employee or for discharge prior to the end of the probationary period. The recommendation of the supervisor shall be forwarded to the director of personnel or other appropriate officer who shall have the responsibility of notifying the employee of the achievement of permanent status or that the employee has been discharged. Failure to notify

an employee of discharge within the probationary period shall constitute acceptance of the employee's performance as satisfactory and preclude discharge without cause.

## Section B. Seniority

### 1. Definition of Seniority.

Seniority means a permanent employee's length of service with the employing campus in a bargaining unit position. Seniority is not transferable between units of the Montana University System, departments, or unions.

### 2. Seniority in Hiring.

Where qualifications of applicants for any position are equal in other respects, an employee with seniority shall prevail.

### 3. Seniority in Layoffs.

The Employer shall give at least 30 calendar days notice to employees who are to be laid off and to the Bargaining Agent. The notice shall specify whether the layoff is temporary or permanent.

In the event a layoff is deemed necessary by the Employer, the Employer shall identify the classification and department where a reduction must occur. The employee with the least cumulative seniority in that classification and department shall be identified and given notice of layoff unless that employee is eligible to bump into a lower graded position. When calculating cumulative seniority for layoff purposes, an employee's cumulative seniority shall include seniority earned in any higher or lower paid classification in the bargaining unit on the employing campus. To bump an employee in a lower-graded position an employee must have worked on campus in the lower-graded position on a permanent, full-time basis and must have greater seniority than the least senior employee in the lower-graded position. Seniority may not be used to bump employees in higher grades. An employee who bumps into a lower-graded position to avoid a layoff shall be paid the lower salary after 30 calendar days notification.



4. Seniority in Recalls.

Employees who have been laid off shall be entitled to be recalled to their former classification if a position becomes available at the employing campus within one year from the date of layoff. Both the employee and the Bargaining Agent shall be notified by certified mail of any recall to employment. If the employee fails to communicate acceptance of a recall to employment or an offer of re-employment within ten working days from the date of receipt of the written notice, the employee shall be considered as having forfeited any right to recall. In no case shall the total time for the employee to communicate acceptance exceed 20 working days from the date of mailing of the written notice. It is the responsibility of employees to inform the Employer of their current address.

5. Seniority Rights.

The right of seniority may be exercised by the employee with regard to layoffs, recalls to employment and employment preference. Both layoffs and recalls to employment shall be in order of seniority within a classification and within a budgeted department. The employee last hired will be the first released and the last employee released will be the first rehired. Where qualifications of applicants for any position are equal in other respects, an employee with seniority shall prevail. Seniority is not transferable between units of the Montana University System, departments or unions.

6. Seniority List.

The Employer shall maintain and make available to the Bargaining Agent, as well as the employees in the bargaining unit, a seniority roster by the appropriate department.

Section C. Vehicle Registration and Parking

All employees covered by this agreement shall be provided staff parking in existing 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. (Mont. Code Ann. § 20-25-312)

#### Section D. Employment Records

Any employee shall be entitled, upon request, to see any of his/her own employment records in the possession of the Employer.

#### Section E. Educational Leave and Fee Waivers

All employees are encouraged to pursue self-improvement or self-enrichment courses of study. Any employee may take any number of courses for which the employee is academically qualified.

1. Time-off to Attend Class.

When a course which an employee desires to take is only offered during the employee's regular work schedule, the course may only be taken with the advance written approval of the supervisor. This approval may not be arbitrarily or capriciously withheld, but may be withheld if attendance would interfere with the employee's job performance or with the effective operation of the work unit. The time off may be taken as either vacation leave, leave without pay or, with the prior written consent of the supervisor, may be made up within the same working day.

2. Fee Waivers.

Any employee who has successfully completed the probationary period and who is regularly scheduled for at least three-quarter time (.75 FTE) during the entire period of enrollment, may be entitled to a waiver of all fees except registration and building fees in accordance with the individual unit's current policy. Application for this fee waiver must be made in advance in accordance with the procedures published by the Registrar. If an employee's FTE level is involuntarily reduced below .75 FTE or if an employee is laid off after the first day of enrollment, the waiver shall continue for that quarter/semester.

3. Required Courses.

When a supervisor requires an employee to take a course to update his or her knowledge in a field directly related to the employee's assigned duties, all costs associated with the course shall be paid by the department and the employee shall not be required to "make up" the time spent attending class. Each situation of this nature shall require the advance written approval of the college Dean or appropriate Vice President.

Section F. Receipt of Gifts or Interest in Contracts.

No employee shall solicit or accept any gift or consideration in return for a promise to hire, hiring, or continuing the employment of another (Mont. Code Ann. § 2-2-201) or for any decision or action in the regular course of employment, and no employee shall have any interest in any contract made by them in their capacity as employee. (Mont. Code Ann. § 2-2-202)

Section G. Staff Participation in Governance

The Employer shall not discontinue staff participation in governance and shall continue to grant nonacademic membership on committees when in the best interest of the institution or when the function of the committee is affected with nonacademic staff interests. Staff participation in governance shall not be regarded as an incursion into the area of exclusivity of representation which is the right of the Bargaining Agent except as to those matters specifically negotiated in the collective bargaining agreement. Nothing in this section requires either the establishment or the continuation of committees or the concurrence with any recommendations thereof.

Section H. Meal Periods

No employee shall be required to work more than five consecutive hours without being allowed an unpaid meal period except in cases of emergency or unless the employee is granted an opportunity to consume a meal during working hours. No unpaid meal period shall be for less than one-half hour.

#### Section I. Unauthorized Use of Services, Property or Facilities

No services, property, or facilities of the Employer may be used by any employee for other than official purposes incident to and in the course of their regular employment.

#### Section J. 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. (Mont. Code Ann. § 50-71-201) 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. (Mont. Code Ann. § 50-71-203). Employees shall notify the supervisor of any safety hazards incident to their employment. (Mont. Code Ann. § 50-71-322)

#### Section K. 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 any 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 paragraph.

#### Section L. Emergency Use of Health Service

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

#### Section M. Work Day - Workweek

1. Work Day.

The basic straight-time work day shall be eight consecutive hours, exclusive of lunch period, for all employees except those Engineers performing work on a Kelly Shift work schedule. Start and end times may be adjusted by mutual agreement. An alternate workday/schedule may be established by mutual agreement at the campus.

2. Work Week.

A workweek is from midnight Sunday to midnight of the following Sunday each week. Forty hours within five days, Monday through Friday, inclusive, shall constitute the work week except for those performing work on the Kelly shift.

#### Section N. Labor Management Committee

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

## ARTICLE XI. EMPLOYEE BENEFITS

### Section A. Leaves of Absence With Pay

#### 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 D. Annual leave charges will be recorded and approved in accordance with campus policy.

##### a. Holidays Not Leave Time.

Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is on paid sick leave or paid vacation shall be earned by the employee and not charged as sick leave or vacation.

##### b. Split Vacations.

Vacation time may be taken on a split vacation basis with the approval of the supervisor.

##### c. Charges by Quarter Hour.

Vacation charges shall be recorded in increments of one-quarter (1/4) hour.

##### d. Extension by Leave Without Pay.

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

#### 2. Sick Leave.

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

##### a. Definitions.

Sick leave is the necessary absence from duty caused when an employee has suffered illness, injury, pregnancy, or pregnancy-related illness; exposure to contagious disease that requires quarantine; the necessary absence from duty to receive a medical or dental examination or treatment; a necessary absence due

to the illness of a member of the employee's immediate family requiring the attendance of the employee, until professional or other attendance can be obtained; or the death of a member of the employee's immediate family. The employee's immediate family shall consist of: spouse, parents, grandparents, brothers, sisters, children, household dependents, and the same relatives of the employee's spouse in like degree.

b. 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.

c. Reporting.

Any illness, medical appointment or emergency which will necessitate use of sick leave shall be reported by the employee to the Employer as soon as possible, and it shall be the responsibility of the employee to assure proper reporting of use of sick leave for record keeping purposes.

d. Charges in Excess of Credits.

Sick leave charges in excess of earned sick leave credits may be charged to earned and available annual leave or leave without pay at the employee's option.

e. Charges by Quarter Hour.

Sick leave charges shall be recorded in increments of one-quarter hour.

f. Physician's Certificate.

A physician's certificate or other evidence to substantiate a sick leave charge may be required by the Employer if a question of abuse exists or to verify an employee's readiness to return to work.

g. Medical Appointments.

Medical appointments may be charged to sick leave provided the minimum time charged is not less than one-quarter hour. The employee must notify the supervisor of a medical appointment at least 24 hours in advance except in case of emergency.

h. Pregnancy as Illness.

Disabilities caused or contributed by pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment.

i. Holidays Not Charged.

Any holidays that fall during a period that an employee is on sick leave will be charged as a holiday and not taken off the total accumulated sick leave.

j. Abuse Defined.

Abuse of sick leave occurs when an employee misrepresents the actual reason for charging an absence to sick leave, or when an employee uses sick leave for unauthorized purposes.

k. Employer Substantiation of Abuse.

The Employer must be able to substantiate any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump sum payment.

l. Alternative Assignment.

In the event that an employee becomes incapable of performing the duties of his/her regular classification through occupational illness or industrial accident, the Employer may transfer the employee without loss of pay to a position for which he/she is qualified provided the change can be accomplished without displacing another employee.

m. Workers' Compensation Not Charged.



Because an employee's pay continues while on sick leave, no employee is entitled to be paid both sick leave and Workers' Compensation payments. An employee injured on the job has the option of taking either sick leave or Workers' Compensation payments.

n. Advancing Sick Leave Credits Prohibited.

Advancing sick leave credits after an employee's earned sick leave credits have been expended is expressly prohibited.

3. Jury Duty or Witness Leave.

Any employee summoned as a juror or subpoenaed as a witness may elect to take annual leave and retain all fees and allowances payable as a result of this service or not to take annual leave and forward such fees and allowances to the Business Office to be applied against wages due for the period of service. Expense or mileage allowances paid by the courts may be retained by the employee in either event. (Mont. Code Ann. § 2-18-619)

4. Military Training Leave.

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

Section B. Leaves of Absence Without Pay

1. Discretionary Leave.

Any employee desiring leave of absence without pay shall secure approval from the Employer. Approval of any leave without pay for five or more days shall be obtained in writing from the supervisor. The maximum leave of absence shall not exceed six months and may be extended at the discretion of the Employer, total not to exceed one calendar year. As a general policy, unless other arrangements are approved, annual leave or sick leave, if applicable, must have been exhausted before leave without pay may be taken.

2. Disability.

In the event that an employee becomes incapable of performing the regular duties of the employee's classification, and sick leave and annual leave have been exhausted without correction or removal of the disability, then an employee shall be granted up to a maximum of nine months cumulative leave without pay. Upon request to the campus human resources office, the period of leave without pay may be extended up to three additional months with accompanying medical documentation. Should the employee still be incapable of performing the regular duties of the employee's position, then the Employer shall discontinue the employment permanently and recruit a permanent replacement for the position. The Employer shall assist the disabled employee to determine and pursue rights under Workers' Compensation or disability insurance and, where feasible, shall seek to reemploy the employee in any other position for which the employee may qualify.

3. 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.

4. Maternity Leave.

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

5. Effect of Leave Without Pay.

When on leave without pay, an employee retains none of the benefits or burdens of employment except a right to return to employment. If the leave exceeds 15 days, the Employer's contribution to medical insurance may be discontinued. However, an employee may remain on group medical insurance by personally paying the amount of the Employer's contribution plus the regular monthly premium. None of the time on leave without pay may be considered for probationary period purposes, and no holiday pay is paid for holidays which fall during leave without pay, nor is a

person a state employee during such leave for purposes of state insurance coverage or use of state property or facilities, including state vehicles. Seniority will cease to accrue during leaves without pay in excess of one year except when the leave without pay is because the employee was called to active military duty.

Section C. Holidays.

1. Holidays Listed.

Employees shall be granted the following paid holidays:

- a. New Year's Day - January 1
- b. Martin Luther King Jr. Day - Third Monday in January
- c. Lincoln's and Washington's Birthdays - Third Monday in February
- d. Memorial Day - Last Monday in May
- e. Independence Day - July 4
- f. Labor Day - First Monday in September
- g. Columbus Day - Second Monday in October
- h. Veteran's Day - November 11
- i. Thanksgiving Day - Fourth Thursday in November
- j. Christmas Day - December 25
- k. State General Election Day - On even numbered years

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 Mont. Code Ann. § 20-25-306.

- a. the Friday following Thanksgiving;
- b. the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and
- c. the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

2. Holiday Pay.

Employees shall receive regular pay for all holidays, and all time worked on any holiday shall be compensated at the rate of time and one-half in addition to regular holiday pay. Holiday pay is paid for the actual or designated holiday, not for the observed day.

3. Eligibility for Holiday Pay.

No employee shall be entitled to holiday pay for any holiday which falls during any period during which the employee is not regularly employed (such as seasonal layoffs or leaves without pay) except as otherwise herein provided.

4. Additional Day Off.

Any 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 Employer. (Mont. Code Ann. § 2-18-603)

5. Part-Time--Prorated.

Part-time permanent employees shall be granted holidays on a prorated basis provided they normally work at least 20 hours per week.

6. Last Day Rule.

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. If a new employee or an employee returning from unpaid 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 herein.

7. Holiday Layoff.

Employees laid off due to Christmas vacation shall be entitled to holiday pay for Christmas and New Year's Day. Any employee laid off or terminated five calendar days or less prior to any paid holiday shall receive pay for that holiday.

8. Holidays Not Charged to Sick Leave or Vacation.

Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is on a paid sick leave or a paid vacation shall be earned by the employee and not charged as sick leave or vacation.

Section D. Rest Periods

Each employee shall be allowed a 15-minute rest break in both the first and second half of each shift. It shall be the supervisor's responsibility to make time available to ensure each employee receives such rest break. Such break shall be taken without loss of pay and the employee shall not be required to make up such time.

Section E. 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. All Operating Engineers will be supplied with coveralls. The employee will be responsible for cleaning the coveralls. Two shirts and pants (or a jacket of comparable cost) will be supplied annually to employees, but only as long as uniforms are required by the Employer.

Section F. 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 G. Insurance Coverage

1. Group Insurance.

The Employer contribution to health insurance for eligible employees shall be \$887.00 per month for the fiscal year ending June 30, 2016, and \$1,054.00 per

month for the fiscal year ending June 30, 2017. All permanent half-time or more employees who regularly work more than six months in any 12-month period are eligible for coverage under the Montana University System Group Health Insurance Program. The Employer will continue to make group insurance contributions for up to four months while an employee is on a Workers' Compensation leave of absence as a result of an injury sustained while employed at a unit of the university system.

2. State Insurance.

a. Unemployment Compensation and Workers' Compensation.

Employees are eligible for unemployment compensation and Workers' Compensation in accordance with state law.

b. General Liability.

In any action brought against any employee by any person other than the Employer for negligence, error or omission, or other actionable conduct of the employee committed while acting in the course and scope of employment, the Employer shall be made a party defendant in the action and recovery against the Employer shall constitute a complete bar to any recovery against the employee unless the claim is based upon an intentional tort or felonious act of the employee. (Mont. Code Ann. § 2-9-305)

c. Indemnification.

In any action in which an employee is a party defendant, the employee shall be indemnified by the Employer for any money, judgments or legal expenses to which the employee may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of employment or is an intentional tort or felonious act of the employee. (Mont. Code Ann. § 2-9-305)

Section H. Dependent Partial Tuition Waiver

A. Eligibility.

Permanent employees must be employed at least three-quarter time for five 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 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.

B. Tuition Waiver Benefit

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 XII. TRAVEL

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

ARTICLE XIII. GRIEVANCE PROCEDURE

Section A. Definition of Grievance

A grievance is any controversy between the parties to this agreement which pertains to: (1) any matter involving interpretation of this agreement, and (2) any matter involving a violation of any of the provisions of this agreement. The Employer agrees that the Bargaining Agent may pursue all complaints through the appropriate channels.

Section B. Time Limit on Presentation

Any grievance must be presented to the Bargaining Agent within 20 days of occurrence. Within ten days of notification of the grievance, the Bargaining Agent shall present the grievance to the head of the department. Any grievance which is not filed within these time limits shall be invalid and without further recourse.

#### Section C. Informal Procedure

Within five days of receipt of the grievance by the head of the department, the head of the department and the Bargaining Agent shall attempt to resolve the grievance. If unresolved within five days the grievance shall be presented in writing to the campus Personnel Officer or designated grievance officer. The Personnel Officer or designated grievance officer shall have ten days to respond to the grievance in writing.

#### Section D. Grievance Committee

Any grievance not resolved by means of the informal procedure may be submitted in writing by the Bargaining Agent to the Commissioner of Higher Education within ten days of receipt of the Personnel Officer's response. Upon receipt of the request to convene a grievance committee, the Commissioner of Higher Education shall appoint a committee comprised of two members selected by management and two 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 working days following the date upon which the grievance is heard by the committee.

#### Section E. Arbitration

In the event the grievance committee is unable to arrive at an agreement within the time specified, the Bargaining Agent may submit the matter to arbitration by giving written notice of their intention to arbitrate to the campus personnel office and the Commissioner of Higher Education within ten days from the date the committee decision was due. Upon the written request of the Commissioner, a 15-day postponement in the selection of an arbitrator shall be granted to allow the Commissioner a final opportunity to attempt to resolve the matter prior to arbitration. The following procedure shall be pursued during the 15-day



period. When selecting an impartial arbitrator the parties shall first attempt to agree on an arbitrator who is agreeable to the Employer and the Bargaining Agent. In the event that the parties to the dispute are unable to agree upon a selection of an arbitrator, the Federal Mediation and Conciliation Service shall be requested to provide a list of seven names. Each party to the dispute shall alternately strike names until one remains and that person shall be designated the arbitrator. The arbitrator shall consider the grievance and shall render a decision within 30 days of the date of the receipt of the grievance.

#### Section F. Arbitrator's Authority

The arbitrator shall not have the power to detract, modify or amend this agreement in any way.

#### Section G. Decisions Binding

The decision of the grievance committee or that of the arbitrator shall be binding upon all parties concerned.

#### Section H. Expenses

Each party shall bear the fees and expenses of the presentation of its own case. The fees and expenses of the impartial arbitrator shall be shared equally between the parties.

#### Section I. Transcript Costs

In the event one of the parties to the arbitration wants a transcript of the arbitration proceedings, the party requesting the transcript shall pay the cost of such transcript.

#### Section J. Timeframes

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. Time limits specified herein may be extended by mutual agreement of the parties involved at that step of the procedure. Any grievance which is not filed or advanced within the time limits provided for herein shall be invalid and without further recourse.

### ARTICLE XIV. DISCIPLINE AND DISCHARGE

#### Section A. Disciplinary Suspension

The Employer may impose a disciplinary suspension for any period up to a maximum of five working days. Disciplinary suspensions of a longer duration will be allowed after notice and opportunity for discussion with the Bargaining Agent and the employee(s) or when a complete investigation takes longer than five days. If during the investigation no wrongdoing is found, the employee will be reinstated with back pay. Such disciplinary suspension shall not constitute a waiver of the right to discharge and is subject to the grievance procedure.

#### Section B. Discharge

Discharge of any employee results in permanent discontinuance of employment and any rights of the employee incident to the employment relationship.

1. Discharge Without Cause.

Temporary employees and employees who have not completed the period of probation herein provided may be discharged by the Employer without cause consistent with the terms of their employment agreement.

2. Discharge With Cause.

No permanent employee who has completed the probationary period may be discharged without cause.

3. Protection of Discharged Employee.

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 a discharged employee has applied for employment with a truthful statement of the reason for such discharge. (Mont. Code Ann. § 39-2-802)

4. Employer to Furnish Reason for Discharge.

The Employer shall furnish, upon demand by any discharged 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. (Mont. Code Ann. § 39-2-801)

5. Discharge for Attachment or Garnishment Prohibited.

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

6. 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. (Mont. Code Ann. § 2-18-618) 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.

7. 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. (Mont. Code Ann. § 2-18-617) Any employee discharged for abuse of sick leave shall forfeit the lump sum payment equal to one-quarter of the pay attributed to the employee's accumulated sick leave. (Mont. Code Ann. § 2-18-618)

8. Right to Warning Letter.

Prior to discharge for any reason other than those set forth in subsection 10 below, the Employer shall give the employee at least one warning letter of the complaint against the employee. The warning letter shall be prepared, dated and signed, and shall clearly state the complaint against the employee. The Bargaining Agent shall receive a copy of all warning letters. The first warning letter that an employee receives will typically not remain in the personnel file for longer than six months but may be retained for a longer duration not to exceed one year in appropriate

circumstances after discussion of the matter with the Bargaining Agent. If the warning letter is to remain in the file for longer than six months, the employee will be provided an interim written progress report by the supervisor within six months from the issuance of the warning letter. Warning letters are subject to the grievance procedure.

9. Causes for Which No Warning Letter May Be Required.

The Employer need not give an employee a warning letter prior to discharge if the cause of such discharge is one of the following:

- (a) dishonesty;
- (b) drug abuse;
- (c) endangering the health or safety of others;
- (d) failure to substantially comply with all the directions of the Employer concerning the service for which the employee was hired, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens on the employee (Mont. Code Ann. § 39-2-404);
- (e) unauthorized absence from work shall not constitute grounds for discharge upon subsequent substantiation by the employee of a just cause for said absence and for failure to obtain prior authorization;
- (f) using or authorizing another to use any state owned or leased vehicle for other than official purposes;
- (g) physical violence or fighting on the Employer's premises;
- (h) brandishing any firearm on the Employer's premises;
- (i) immoral or indecent conduct on the Employer's premises including sexual harassment;
- (j) theft; and
- (k) willful destruction or abuse of the Employer's or another employee's property or materials.

10. Means of Effecting Discharge.

The discharge of an employee shall be effected by the completion of and signing of the form for discharge by the supervisor and the forwarding of one copy to the employee, one copy to the Bargaining Agent representing the employee and the remaining copies through the appropriate reporting channels for signature prior to forwarding to the Director of Personnel or other appropriate officer.

11. Discharge Subject to Grievance Procedure.

Any controversy between the parties regarding discharge or disciplinary action may be pursued through the regular grievance procedure provided in Article XIII of this agreement.

Section C. Employee Assistance Program

The Employer recognizes that behavioral health problems (e.g., drug and alcohol dependency and emotional problems) are correctable through treatment or counseling.

When employee performance is adversely affected by such problems, the Employer will help the employee in identifying local community resources which can provide professional assistance.

In such situations the Employer will recognize that:

1. self referral to services is most desirable;
2. employees who seek assistance should not have job security or promotional opportunity jeopardized by the request for assistance;
3. confidentiality must be maintained and privileged information will be directed only to those who must perform official capacities in such situations; and
4. rehabilitation will be given priority and pursued with the employee before any formal discharge or disciplinary action is contemplated.

In such situations, the employee will recognize that:

1. the Employer must assume responsibility for bringing to the attention of the employee, those work deficiencies which are observed and thought to be a result of the health problems;
2. the Employer is receptive to and encourages employees to indicate their problems and desire for assistance; and
3. the nature of these problems often requires the creation of a crises before an affected individual will pursue professional help.

If in a reasonable length of time job performance and/or work attendance meet requirements, no further action will be taken and no permanent records of the situation will be maintained.

Should job and attendance requirements not be met and/or the employee fails to seek assistance, the Employer may pursue disciplinary or discharge action according to Article XIV, Section B.4 of this contract.

## ARTICLE XV. COMPENSATION

### Section A. Rates Specified.

Employees covered by this agreement shall be compensated for hours worked at the appropriate hourly rate specified in Addendum A. Permanent, non-probationary employees are eligible for lump sum bonuses in accordance with the Montana University System Staff Compensation Plan Guidelines.

### Section B. Longevity Increment.

1. Longevity Pay.

Employees who have completed five years of uninterrupted state service shall receive 1.5 percent of their base salary multiplied by the number of completed, continuous five year periods of uninterrupted state service in accordance with state statutes. The longevity increment for 10, 15 and 20 years of service shall be 2 percent.

<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 C. Premium Pay.

Hourly employees are entitled to pay at rates in excess of straight time regular compensation for time worked or pay for time not worked in the amounts and under the terms and conditions hereinafter specified.

1. Overtime.

Any amount of time an hourly employee is required to work in excess of eight hours in any 24-hour period or in excess of 40 hours in any week will be regarded as overtime and the employee will be compensated at the rate of one and one-half times the normal rate of pay for all overtime worked. (Mont. Code Ann. § 39-3-405) (Montana Constitution, article XII, § 2)

a. Approval Required.

In order to constitute overtime for which an hourly employee is entitled to be paid, the employee must have obtained the approval of the supervisor either prior or subsequent 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.

b. Overtime Increments.

Overtime shall be recorded for payment in increments of one-half hour. Any hourly employee working from one to 30 minutes overtime shall be compensated for one-half hour, and any hourly employee working from 31 to 60 minutes overtime shall be compensated for one hour.

2. Call Outs.

Any hourly employee called out to work early shall receive overtime pay for all time worked prior to the regularly scheduled work period. Any hourly employee called out to work after an eight hour day or 40 hour week shall be guaranteed a minimum of two hours overtime pay.

3. Show Up Guarantee.

It shall be the responsibility of the supervisor to notify any permanent full-time 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 hours of work. If no work is available, the employee shall receive four hours of regular pay in lieu of work.

4. Compensatory Time.

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

a. Accrual Rate.

Compensatory time for employees will accrue at the rate of one and one-half hours for each one hour of overtime worked.

b. Maximum Accumulation.

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

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.



d. Payment on Termination or Death.

Upon termination or death, any unused compensatory time will be paid to the employee or beneficiary at the regular rate of pay at the time of termination or death, or the average regular rate received by the employee during the last three 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.

Section D. Pay Days and Deductions

The Employer shall establish regular pay days and shall furnish each employee an itemized statement of the purpose and amount of every deduction from wages. (Mont. Code Ann. § 39-3-101)

Section E. Public Employees Retirement System

Retirement shall be governed by applicable state and federal statutes. The amount of the employee and Employer contributions, retirement benefits and other details shall be governed by the provisions of Title 19, Chapter 3 of Montana statutes.

Section F. Mandatory Deductions.

Any employee shall be entitled, upon written request, to have any of the following deducted from wages: university sponsored health or life insurance, U.S. Savings Bonds, credit union, approved tax sheltered annuities, and union dues or service fee to Bargaining Agent. Other deductions may be made with approval of the designated campus representative.

Section G. Designation of Person Authorized to Receive Decedent's Warrants.

Any employee, by completing the standard form, may designate a person to receive the warrant for any wages, benefits or allowance due and payable to the employee by the Employer at the time of the employee's demise. The employee may thereby be assured warrants for monies due will be promptly forwarded to the designated person without recourse to the procedures ordinarily required for the administration of the estate of a decedent. (Mont. Code Ann. § 2-18-412) (Management Memo 1-75-5)

#### Section H. Prescription Safety Glasses

Prescription safety glasses will be furnished by the Employer. The Employer retains the authority to establish reasonable rules and procedures regarding frequency of issue, replacement of damaged glasses, limits on reimbursement costs and coordination with the Employer's vision plan.

#### Section I. Temporary Assignment to Higher Classification

Employees may be temporarily assigned the responsibilities of a higher graded position for reasons deemed appropriate by the appointing authority. An employee so assigned shall be notified in writing at the beginning of the assignment as to the anticipated duration of the temporary promotion. The employee will return to their former position and salary at the end of the temporary promotion.

When an employee is temporarily assigned to a higher graded position in accordance with this section for eight (8) or more consecutive hours or a full shift, whichever is greater, the employee will receive the temporary salary increase. The employee will return to his or her former position and salary at the end of the temporary promotion.

### ARTICLE XVI. REFERENCES TO STATUTES IN THE CONTRACT

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.

ADDENDUM A  
International Union of Operating Engineers  
Local #400

I. SCOPE OF WORK

A. Montana State University-Bozeman Only

Scope of Work: To assure the proper and continuous operation of the following items, the Employer recognizes the licensed Operating Engineer of Local #400 shall have the sole and exclusive jurisdiction, operation, maintenance and repair of all plants and heating equipment using steam as a source; all non-heating steam equipment that requires 15 pounds or more steam pressure, all boilers and related equipment, including but not limited to pipelines, valves, machinery, motors, steam generators, engines, compressor pumps, appurtenances, accessories, faulty thermostats or controls, heating or ventilating units, control panels, controls, air lines and steam lines to laboratories and kitchens. The Maintenance Supervisor II (currently IV) shall be limited to firing the boiler when no other Stationary Engineer/Stationary Engineer Maintenance person is available to do so. During normal hours of operation (i.e., 7:30 a.m. to 5:00 p.m.), the Maintenance Supervisor II (IV) may fire to cover absences that are expected to be of brief duration (e.g., doctor's appointment, unexpected sick leave in course of assigned shift, etc.)

B. The University of Montana-Missoula Only

Scope of Work: Scope shall remain the same as in the past. The jurisdiction shall include the steam plant up to and including the first reduction valve outside the plant but not limited thereto. Should the scope of work exceed that previously experienced, then the Employer shall establish sufficient grade levels to insure proper maintenance and supervision of the work to be covered. Maintenance Supervisor IV's shall not replace a stationary engineer on shift except in an emergency when a stationary engineer is not available.

C. The University of Montana-Western Only

Scope of Work: All engineers may repair, maintain, alter or otherwise do whatever is necessary for the continuous operation of all plants, machinery and engines coming under the jurisdiction of the Operating Engineers, but must not install new work coming under the jurisdiction of other crafts. Persons other than bargaining unit employees shall not be allowed to perform bargaining unit work or otherwise replace an engineer except in an emergency.

D. Montana Tech of The University of Montana Only

Maintenance Engineers: Engineers may be assigned to repair, replace, restore, remove and relocate and do any maintenance which is necessary for the proper and continuous operation and maintenance of all physical facilities of Montana Tech. All engineers shall be required to hold at least a Third Class Boiler License as per state law governing the operation of boilers.

Scope of Work: Shall remain the same as in the past.

II. UNION PENSION PLAN

Any unit of the University System at which a substantial majority of employees (at least 75%) covered by this agreement desire to participate in the Union Pension Fund shall execute the required trust agreement and make appropriate payment to the fund in lieu of wage. The amount and method of calculating the deduction shall be determined by mutual agreement.

III. CLASSIFICATIONS AND WAGES

1. Effective on January 15, 2016 the base wage shall increase by \$0.50 per hour.
2. Effective on January 15, 2017 the base wage shall increase by-\$0.50 per hour.

It is understood and agreed between the parties to this agreement that the classifications covered by this agreement and the rates of compensation for the periods specified are as follows:

The University of Montana-Dillon

<u>Job Title</u>	<u>Current</u>	<u>1/15/16</u>	<u>1/15/17</u>
Maintenance Engineer I	22.02	22.52	23.02
Maintenance Engineer II	22.69	23.19	23.69
Maintenance Engineer III/Plumber	24.36	24.86	25.36
Maintenance Engineer III/Lead Supervisor	23.45	23.95	24.45

Montana Tech of The University of Montana

<u>Job Title</u>	<u>Current</u>	<u>1/15/16</u>	<u>1/15/17</u>
Maintenance Engineer I	22.02	22.52	23.02
Maintenance Engineer II	22.69	23.19	23.69

\*Any maintenance engineer permanently assigned the responsibilities for key management shall receive an additional \$1 per hour in base pay for such duties and responsibilities.

The University of Montana-Missoula

<u>Job Title</u>	<u>Current</u>	<u>1/15/16</u>	<u>1/15/17</u>
Stationary Engineer	22.47	22.97	23.47
Maintenance Engineer	23.19	23.69	24.19

Montana State University-Bozeman

<u>Job Title</u>	<u>Current</u>	<u>1/15/16</u>	<u>1/15/17</u>
Stationary Engineer	22.47	22.97	23.47
Repair Maintenance Engineer	22.69	23.19	23.69
Maintenance Engineer I	22.94	23.44	23.94
Maintenance Engineer II	23.19	23.69	24.19

Maintenance Supervisor I	23.37	23.87	24.37
Maintenance Supervisor II	24.36	24.86	25.36

For the contract term ending June 30, 2017, if the Employer negotiates greater across-the-board pay raises with any other hourly staff bargaining unit in the Montana University System, the parties agree to re-open the wage provisions of the contract for negotiations.

IV. MINIMUMS CLAUSE

The above wage rates are intended as minimums. The Employer may implement a higher wage for one or more employees provided that no covered employee shall suffer a reduction in hourly rate of pay so long as such employee remains in the same position or job classification without negotiation.

An hourly wage higher than that specified in this agreement shall be paid only in the event of unique, documented circumstances and shall be applicable only to the affected employee or employees. The Commissioner of Higher Education’s designee shall approve or deny requests for higher rates of pay.

IV. LICENSE REQUIREMENT

Maintenance Supervisors shall be required to have the same license as required of employees under their supervision.

V. JURISDICTIONAL DISPUTES

A jurisdictional dispute shall be settled by the local unions involved, through the international unions, or the National Labor Relations Board. The Employer shall maintain its original work assignments until the issue has been resolved. It is agreed that there shall be no stoppage or abandonment of work in regard to any jurisdictional dispute.

## ADDENDUM B

### STATE STATUTES

2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; or

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom he is related assumed the duties of the office.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located.

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:

Years of employment	Working days credit
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.

2-18-616. 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.

2-18-620. 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.

MEMORANDUM OF UNDERSTANDING

**Call Outs**

Article XV. Compensation, Section C. Premium Pay, #2. Call Outs  
(Expires June 30, 2017)

This Memorandum of Understanding is effective upon Board of Regents ratification through June 30, 2017. For this period, to provide an opportunity to assess the effectiveness of modifying Call Outs, the parties agree to the following: Any hourly employee called out to work after an eight hour day or 40 hour week shall be guaranteed a minimum of three (3) hours of overtime pay.

**Memorandum of Understanding**

*between*

The International Union of Operating Engineers, Local # 400

*and*

Montana University System

The parties agree to form a committee to meet and explore options related to job classification and compensation structure. It is understood recommendations from the committee will be by mutual agreement and are subject to ratification by the union.

The Business Agent and OCHE will determine timelines and frequency of meetings. Meetings will commence no later than September 30, 2016.

This agreement does not add to, subtract from or otherwise modify the existing bargaining agreement.

DATED this 15<sup>th</sup> day of August, 20 16.

FOR THE  
MONTANA UNIVERSITY SYSTEM:

FOR THE UNION:



Clayton Christian  
Commissioner of Higher Education



Steve Gross, Business Agent



Kevin McRae  
Deputy Commissioner for  
Communications and Human Resources

DATED this 21<sup>st</sup> day of July, 2016.

FOR THE MONTANA  
UNIVERSITY SYSTEM:

FOR THE INTERNATIONAL UNION  
OF OPERATING ENGINEERS:



\_\_\_\_\_  
Clayton T. Christian  
Commissioner of Higher Education



\_\_\_\_\_  
Steve Gross, Business Agent



\_\_\_\_\_  
Kevin McRae, Deputy Commissioner  
Communications and Human Resources

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