

**Memorandum of Understanding  
Between  
Montana State University  
And  
The Montana State University Foundation, Inc.**

THIS AGREEMENT (“Agreement”), entered into as of this \_\_\_\_ day of \_\_\_\_, 2008 by and between Montana State University (“University”) and the Montana State University Foundation, Inc. (“Foundation”), a non-profit corporation.

**Recitals**

The University is Montana’s land grant institution of higher education and a unit of the Montana University System;

The Foundation is a separately incorporated entity, organized under Section 501(c)(3) of the Internal Revenue Code (“IRC”) to enhance the continuing excellence of Montana State University by attracting financial support and being prudent stewards of its resources and friendships;

As an independent corporation, the Foundation’s relationship to the University is governed by the Foundation’s Articles of Incorporation and Bylaws;

The University has officially recognized the Foundation as its affiliated foundation for the purposes outlined in Section 901.9 for the Montana University System Policy and Procedures Manual;

The University desires to acquire and maintain and the Foundation desires to provide, for a fee, services related to fund-raising, donor development, and asset investment for the benefit of the University and its affiliated programs;

The Foundation is uniquely positioned to provide fund-raising and asset investment services to the University in an efficient and cost-effective manner in that the Foundation retains personnel experienced in planning for, securing, and managing private contributions and works with the University to assist and advise in such activities. Furthermore, the provision of such services is consistent with the Foundation’s mission.

## **Terms of Agreement**

NOW THEREFORE, in consideration of the mutual covenants and commitments of the University and the Foundation (“Parties”) contained herein, the mutual benefits to be gained by the performance hereof, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

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

Consistent with its mission to help advance the plans, priorities, and objectives of the University, the Foundation is granted the use of the names Montana State University Foundation, Montana State University Foundation, Inc., and MSU Foundation and is granted the use of MSU logo under the University’s Graphic Identity and Branding Policy until such time as the Foundation dissolves, the Foundation ceases to be recognized as a tax exempt organization, or the University’s President withdraws recognition of the Foundation. The President’s decision to withdraw recognition of the Foundation may be appealed to the Montana Board of Regents under Section 203.5.2 of the Montana University System, Policies and Procedures Manual.

At all times, the Foundation will operate under its own seal and logotype and shall not use the University seal in the promotion of Foundation business and activities unless separately approved.

### **Section 2 – The Foundation’s Relationship to the University**

The Foundation’s board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts made to the Foundation consistent with donor intent and according to all applicable laws.

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

The Foundation is responsible for the employment, compensation, and evaluation of its employees, including the Foundation President and Chief Executive Officer.

The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the University and will make those funds available through Foundation accounts

annually in compliance with state law and University policies or to reimburse appropriate presidential expenditures. All such expenditures must comply with the IRC § 501 (c)(3) and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audit.

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

The University President is responsible for communicating the University's priorities and long-term plans to the Foundation.

The University recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential consistent with the law. As such, the University will create, maintain, and adhere to policies and procedures that protect the confidential nature of the Foundation's data and foster the individual reasonable expectation of privacy attendant to that data as allowed by law. The President and Chief Executive Officer of the Foundation shall be included as a member of the University President's cabinet and senior administrative team and shall include the Foundation as an active and prominent participant in the strategic planning for the University.

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

**Section 4 – University Responsibilities:** The University shall provide all services and attendant fees to the Foundation as outlined below:

4.1 – Development Services Compensation. In consideration for the Foundation's fund raising services including but not limited to the responsibilities listed in Section 5 (Foundation Responsibilities), the University will provide the Foundation with fair and reasonable compensation as payment for services. The amount of compensation will be negotiated on a triennial basis (or more frequently if so agreed by both parties) by the end of March preceding the fiscal year in which the compensation is to be paid. The compensation and payment dates for each of the two (2) fiscal years immediately following the date of this Agreement are included as Attachment A and may be modified upon approval of both parties.

4.2 – Development Officer Cost Sharing. The University shall share, generally on an equal basis, the salary and cost of employment benefits of development officers assigned to serve particular units of the University. The cost sharing arrangement for each such development officer position shall be funded from funds held by the Foundation or the University for use at the discretion of

the unit served (or if necessary, the President of the University). The cost sharing arrangement shall be negotiated by both parties and evidenced by a separate memorandum of understanding relating to cost sharing for development positions following the sample included as Attachment B.

4.3 – Fundraising. The University shall establish and enforce policies that support the Foundation's ability to coordinate all fund-raising activities that seek and solicit private support for the benefit of the University.

The University President, deans, directors, appropriate administrators, other University officials, and University-selected or University-sanctioned volunteers shall work in conjunction with the Foundation staff, Foundation Board of Directors and the Foundation President and Chief Executive Officer to identify, cultivate, solicit, and steward donors and prospective donors of private gifts. In so doing, the University President, deans, directors, appropriate administrators, other University officials, and University-selected or University-sanctioned volunteers shall adhere to all applicable Foundation policies and procedures.

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

4.5 – Provision of Data. When allowed by law, the University shall provide to the Foundation data, as reasonably requested by the Foundation and deemed necessary by the Foundation for the maintenance and support of fundraising efforts.

4.6 – Other Services. The University will also provide the following services at a mutually agreed upon rate, including but not limited to the following:

(a) Storage of Information Technology Applications, Software and Data. In the event the Foundation's information technology requires external services, the Foundation and the University may agree to terms relating to such services under a separate agreement. Those services include but are not limited to, data and systems storage and associated maintenance.

(b) Internet Service. The University will provide the Foundation with internet access and use of the University email system and other internet services as needed.

(c) Additional Services. In addition to those listed above, the Foundation may request additional services and the University may elect to charge the Foundation for those services at a mutually agreed upon rate under a separate agreement or contract for services.

**Section 5 – Foundation Responsibilities:** The Foundation shall provide the University with fund-raising and asset investment services, which shall include all services related to the following discrete activities:

5.1 – Fund-Raising. In a coordinated and cooperative effort with the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University as established by the University, as follows:

(a) Donor Development, Relations and Stewardship. The Foundation is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs designed to encourage prospective and current donors in support of the University's mission. Activities include donor cultivation, donor research, donor solicitation, periodic updates and/or reports to donors to assure that donor intent is being fulfilled, and appropriate acknowledgment and receipting of donor gifts.

(b) Annual Fund. The Foundation shall plan, coordinate, and execute activities designed to identify, cultivate, and solicit gifts of less than \$25,000 to support the operations of the Foundation and the University's various programs.

(c) Corporate and Foundation Giving. The Foundation shall plan and execute activities designed to identify, cultivate and solicit gifts, research support, and/or grants from corporations and foundations.

(d) Major Gifts. The Foundation shall plan and execute activities designed to identify, cultivate, and solicit gifts of \$25,000 or more from individual donors.

(e) Planned Giving/Gift Planning. The Foundation shall plan and execute activities designed to identify, cultivate, consult with, and solicit individuals who wish to make deferred gifts or bequests and to assist those prospective donors in designing their gifts to best meet their needs and the needs of the University.

(f) Campaigns. The Foundation shall be responsible for planning and executing comprehensive, multi-year campaigns and developing fund raising goals and methodologies for obtaining support for the University's strategic objectives as defined in collaboration with the University President, deans, and other University officials. In performing this service, the Foundation shall also provide the University with counsel and direction as to the feasibility of certain goals, projects, and initiatives for which the University is soliciting or would like to solicit support.

(g) Educational Programs. To effectively implement the Foundation's fund-raising initiatives, the Foundation shall provide educational programs for University officials and personnel who may be involved in fundraising with information about fund-raising strategies and techniques, as well as information about the resources provided by the Foundation's programs, policies, and procedures.

(h) Development Events. All events that are considered to be for the purpose of cultivating, stewarding, and/or recognizing donors and prospective donors of the University shall be cleared through the Foundation to ensure coordination of fundraising activities.

5.2 – Gift Acceptance and Acknowledgment. The Foundation will establish, adhere to, and periodically assess its gift acceptance and fund management policies and procedures. The Foundation will promptly acknowledge and issue receipts for all gifts made to the Foundation and provide appropriate recognition and stewardship of such gifts. If gifts are received by the University in lieu of the Foundation, the Foundation will provide appropriate recognition for such gifts when properly notified by the University. By law, the Foundation cannot acknowledge or provide receipts for gifts made directly to the University.

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

5.3 – Donor Records. The Foundation shall establish and enforce policies and procedures to comply with all applicable laws and regulations and to protect the confidentiality of Foundation information and the reasonable expectation of privacy attendant to donor and prospective donor data.

5.4 – Asset Investment. If the University deposits gifts with the Foundation for investment

purposes, the Foundation may pool those funds with the Foundation's funds and other funds held by the Foundation in a pooled investment portfolio ("Pooled Investments"). In doing so, it is mutually understood that:

- The University retains ownership of the University funds;
- The Foundation is authorized to invest the University funds in the same manner as other Foundation funds;
- University funds are subject to the Foundation's administrative fees in accordance with the Foundation's Fee Assessment, Endowment Spending and Investment Income Allocation Policies;
- University funds may be pooled with the Foundation's institutional funds and other funds for the purpose of participating in the Pooled Investments;
- There is no trust relationship between the Foundation express or implied;
- Pooled Investments are invested in accordance with the Foundation's investment policy;
- There is an inherent risk involved with investing that is beyond the control of the Foundation, including the potential for loss of the University's principal in the initial investment, loss of subsequent deposits, loss of interest or appreciation, and loss of other financial gains;
- Neither party is obligated to offer or accept investment advice to or from the other party;
- The Foundation has not and does not hold itself out as an investment advisor or as a professional investment corporation;
- The University representative for all matters relating to the investment of University funds by the Foundation is the University's Vice President for Administration & Finance or his or her designee.

For all University funds invested by the Foundation, the Foundation shall provide periodic summaries and confirmations of balances of the University funds as may be requested or required. The University may attend any Foundation board of directors meeting where decision or discussion regarding the investment policy may be held. Additionally, the Foundation shall provide the University with a copy of the most recent investment policy.

Upon written notice from the University requesting withdrawal of University funds from the Pooled Investments, the Foundation will withdraw the funds within a reasonable length of time such that removal of the funds may be completed without adversely affecting the remaining investment portfolio.

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

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

5.6 – Fund Administration and Distribution. The Foundation will administer private gifts to benefit the University and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and fund agreements.

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

When establishing a new account, the Foundation will disclose any terms, conditions, or limitations legally imposed by the donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate acknowledgment of such terms, conditions, or limitations and documentation of compliance.

5.7 – Funding of Foundation Operations. The Foundation is responsible for establishing a financial plan to pay the costs of Foundation programs, operations, and services. The Foundation has the right to impose a reasonable percentage fee on annual unrestricted funds.

Except as outlined herein or as otherwise agreed, the Foundation, at its own expense, will provide office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

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

5.8 – Other Responsibilities. The Foundation will engage an independent accounting firm

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

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

The Foundation may accept licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by third parties, or engage in other activities to increase Foundation revenue consistent with its mission.

5.9 – Compliance. In fulfilling these obligations, the Foundation shall comply with applicable state and federal law and its own policies and procedures, including maintenance of a conflict of interest policy for board members and staff and adherence to the requirements of the Campus Affiliated Foundations Policy, Section 901.9, Montana Board of Regents Policies and Procedures Manual.

**Section 6 – Confidentiality and Access to Information by Non-Foundation Employees:** The Foundation will provide copies or provide access to all public documents of the Foundation including,

- Policies and procedures documentation, including:
  - Gift Acceptance Policy
  - Investment Policies
  - Disbursement Guidelines
  - Accountability Policies
- Organizational documents, including articles of incorporation and corporate bylaws
- Audited financial statements
- Form 990, Return of Organization Exempt from Income Tax

The parties agree that confidential information which is not available for public inspection includes the following:

- Information relating to donors and prospective donors:

- Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning or gift planning matters
- Records received from a donor or prospective donor regarding such donor's prospective gift or pledge
- Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge
- Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor
- Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This does not apply to a gift or pledge from a publicly held business corporation.
- Information relating to fundraising plans and strategies
- Trade secret information and information relating to the business of any foundation subsidiary which, if released, could create a competitive disadvantage
- Individual employee information other than name, title and salary
- Individual student information
- Information relating to trusts and annuities administered by the foundation, except as to actual gifts to the foundation from such a trust or annuity
- Other information protected by law

When necessary or beneficial to the efficient execution of fund raising activities, the Foundation may provide access to Foundation data and records to select University personnel on a limited, need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. Providing such access shall not negate the confidential nature of the Foundation's information and records or the classification of such information and records as trade secrets. Additionally, providing such access does not undermine the reasonable expectation of privacy of donors and prospective donors with respect to the information provided to and/or maintained by the Foundation. Any non-Foundation employee with access to Foundation information shall be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access.

### **Section 7 – Collaborative Planning & Activities**

In addition to the collaborative efforts and activities described above, the Foundation and

University agree as follows:

7.1 – Fund Raising Priorities and Goals. By May 31 of each fiscal year, the Foundation shall, in conjunction with the University, develop annual fund raising goals which shall account for the University-wide fund raising priorities for the upcoming fiscal year. These priorities and goals shall consider the University's strategic needs, as defined by the University, as well as the Foundation's resources, personnel and capacity.

7.2 – Performance Reports. The Foundation and the University shall collaborate to provide comprehensive annual reporting of all voluntary, private support for the benefit of the University. The University and its affiliates shall provide the Foundation with comprehensive reports of qualified gifts and pledges to the Foundation on a quarterly basis.

## **Section 8 – Other Matters**

8.1 – Statement of Coordination. This Agreement is intended to contribute to the coordination of the mutual activities of the Foundation and the University. To ensure effective achievement of the items of this Agreement, the University and the Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

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

8.3 – Winding Up Upon Foundation Dissolution. Consistent with the provisions of the Foundation's Bylaws and its Articles of Incorporation, should the Foundation cease to exist or cease to be an IRC § 501 (c)(3) organization, the Foundation will transfer its assets and property to the University or its assignee.

8.4 – Regent's Approval. This agreement is not effective until approved by the Montana Board of Regents. The parties agree and understand that this agreement will be reviewed and approved by the Board of Regents every two years.

8.5 – Liability Exposure. The parties understand and agree that the liability of the University, its officials and employees, is controlled and limited by the provisions of Title 2, Ch. 9, MCA. Any provisions of this agreement shall be controlled, limited and otherwise modified to limit any liability of the State of Montana and the University to that set forth in the above cited law.

8.6 – Indemnification.

(a) Each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees, to the full extent required by law.

(b) Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other upon request.

8.7 – Termination.

This agreement may be terminated at any time by the mutual written consent of the parties or termination may be invoked by either party upon 90 days written notice to the other. In the absence of termination notice, this agreement shall be automatically renewed year to year under the same terms as set forth in this agreement.

The parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the date set forth above.

BOARD OF REGENTS OF THE  
MONTANA UNIVERSITY SYSTEM

By: \_\_\_\_\_

President  
Montana State University

\_\_\_\_\_  
Geoffrey Gamble

MONTANA STATE UNIVERSITY  
FOUNDATION, INC.

By: Connie C. Talbott

President & Chief Executive Officer  
Montana State University Foundation

Connie C. Talbott  
Connie C. Talbott

**Attachment A**

**Development Services Compensation Agreement**

Montana State University ("University") and the Montana State University Foundation, Inc. ("Foundation"), hereby agree that the direct compensation to be paid by the University to the Foundation for services provided as outlined in Section 5 of the Memorandum of Understanding dated \_\_\_\_\_ shall be as follows:

Total for FY 2008: \$100,000  
Total for FY 2009: \$100,000

One-fourth (1/4) of the annual payment due to the Foundation will be paid by the University on the first day of each calendar quarter beginning on July 1 of each year.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

BOARD OF REGENTS OF THE  
MONTANA UNIVERSITY SYSTEM

By: \_\_\_\_\_

President  
Montana State University

\_\_\_\_\_  
Geoffrey Gamble

MONTANA STATE UNIVERSITY  
FOUNDATION, INC.

By: Connie C. Talbott

President & Chief Executive Officer  
Montana State University Foundation

Connie C. Talbott  
Connie C. Talbott

## Attachment B

### Memorandum of Understanding Cost Sharing for Development Positions

THIS AGREEMENT ("Agreement"), entered into as of this \_\_\_\_ day of \_\_\_\_, 2008 by and between Montana State University ("University") and the Montana State University Foundation, Inc. ("Foundation").

#### Recitals

WHEREAS, the Montana State University Foundation, Inc. ("Foundation") is an independent, non-profit, tax-exempt organization organized to support Montana State University through private support.

WHEREAS, the Foundation employs and directly supervises all development personnel who are responsible for raising funds for the benefit of the University.

THEREFORE, in order to dedicate a Foundation staff member ("development personnel," "Director of Development" or "DOD") to provide fund raising services to a particular University unit, the Foundation, Montana State University, and the [UNIT TO BE SERVED] agree to the following terms:

1. The University will reimburse the Foundation for one-half ( $\frac{1}{2}$ ) of the salary and benefits of the wage line dedicated to the development portion of a particular school or program on campus. In addition, the University will reimburse the Foundation for development personnel travel and travel-related expenses when such expenses are incurred on behalf of the program along with paying other direct expenses such as phone, office space, supplies, and reasonable clerical support for these activities. Memoranda of understanding will be signed between the programs and the Foundation and are attached to this document.
2. The Foundation will pay, solely with Foundation resources one-half ( $\frac{1}{2}$ ) of the DOD's salary and benefits for the wage line dedicated to this program. The Foundation will assume direct responsibility for paying the full cost of the DOD's salary and benefits, subject to the reimbursement obligation by the University, through the program, set forth in Paragraph 1 above.
3. All DODs will report to the Foundation President and Chief Executive Officer, with a strong dotted reporting line to the dean/director of the unit in which they are operating. DODs will reside within the appropriate unit or within the Foundation depending on the circumstances of the unit. Each unit's dean/director will be involved in the hiring of the unit's DOD and the

formulation and approval of the annual plan and related budget to be executed by the DOD. The unit's dean/director will also participate in the yearly written performance evaluation of the DOD. In the event that other personnel actions involving a DOD are required in between yearly evaluations, the President and Chief Executive Officer will consult with the appropriate dean/director prior to taking action.

4. This Agreement will be renewed annually, subject to mutually agreeable terms, conditions and modifications. Termination of this Agreement may be made with a thirty (30) day written notice by either party.

SIGNED and AGREED TO this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

MONTANA STATE UNIVERSITY

MONTANA STATE UNIVERSITY  
FOUNDATION, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

President  
Montana State University

President & Chief Executive Officer  
Montana State University Foundation

\_\_\_\_\_  
Geoffrey Gamble

\_\_\_\_\_  
Connie C. Talbott

[UNIT SERVED]  
MONTANA STATE UNIVERSITY

By: \_\_\_\_\_

Dean or Program Director  
[UNIT SERVED]

\_\_\_\_\_  
[Insert Name]