

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**THE MONTANA BOARD OF REGENTS OF HIGHER EDUCATION**

**AND**

**INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL #400**

**JULY 1, 2007 -- JUNE 30, 2009**

**TABLE OF CONTENTS**

**ARTICLE 1 - RECOGNITION..... 1**

    1.1    PARTIES TO THE AGREEMENT..... 1

    1.2    RECOGNITION ..... 1

    1.3    BARGAINING UNIT DEFINITION ..... 1

    1.4    EXCLUDED EMPLOYEES ..... 1

**ARTICLE 2 - UNION RIGHTS ..... 2**

    2.1    UNION SECURITY ..... 2

    2.2    DUES CHECKOFF ..... 3

    2.3    INDEMNIFICATION..... 3

    2.4    UNION ACTIVITIES PROTECTED..... 3

    2.5    JOB STEWARDS..... 3

    2.6    BARGAINING POOL LEAVE..... 3

**ARTICLE 3 - MANAGEMENT RIGHTS ..... 4**

    3.1    MANAGEMENT RIGHTS ..... 4

**ARTICLE 4 - NO STRIKES..... 5**

    4.1    STRIKES PROHIBITED..... 5

**ARTICLE 5 - COMPENSATION..... 5**

    5.1    PAY SCHEDULE..... 5

    5.2    WAGE WITHHOLDING..... 5

    5.3    INSURANCE COVERAGE..... 5

    5.4    RETIREMENT ..... 6

    5.5    PAY DAYS..... 6

    5.6    UNION PENSION PLAN ..... 6

    5.7    TEMPORARY ASSIGNMENTS TO HIGHER CLASSIFICATION ..... 6

    5.8    LONGEVITY ..... 7

**ARTICLE 6 - HOURS OF WORK AND OVERTIME ..... 7**

    6.1    WORK DAY/WORK WEEK..... 7

6.2	ALTERNATE WORK SCHEDULE.....	7
6.3	MEAL PERIODS.....	8
6.4	REST BREAK .....	8
6.5	OVERTIME.....	8
6.6	CALL BACK.....	8
6.7	COMPENSATORY TIME.....	8
6.8	PROTECTIVE CLOTHING OR UNIFORMS .....	9
<b>ARTICLE 7 - LEAVES OF ABSENCE.....</b>		<b>9</b>
7.1	ANNUAL VACATION LEAVE.....	9
7.2	SICK LEAVE .....	10
7.3	JURY AND WITNESS LEAVE .....	10
7.4	MILITARY TRAINING LEAVE.....	10
7.5	PUBLIC SERVICE LEAVE.....	10
7.6	MATERNITY LEAVE.....	11
7.7	UNPAID LEAVE .....	11
7.8	PROFESSIONAL LEAVE .....	11
<b>ARTICLE 8 - HOLIDAYS.....</b>		<b>11</b>
8.1	HOLIDAYS LISTED .....	11
8.2	HOLIDAY EXCHANGES AUTHORIZED .....	12
8.3	HOLIDAY ELIGIBILITY REQUIREMENTS .....	12
8.4	HOLIDAY PAY .....	12
<b>ARTICLE 9 - PROBATION AND DISCHARGE.....</b>		<b>12</b>
9.1	PROBATIONARY PERIOD.....	12
9.2	DISCHARGE OF EMPLOYEES .....	13
9.3	EMPLOYEE RECORDS.....	13
<b>ARTICLE 10 - SENIORITY, LAYOFFS, AND VACANCIES .....</b>		<b>14</b>
10.1	SENIORITY DEFINED .....	14
10.2	SENIORITY IN HIRING .....	14
10.3	SENIORITY IN UNSCHEDULED LAYOFFS .....	14

10.4	SCHEDULED LAYOFF .....	14
10.5	RECALL TO EMPLOYMENT .....	15
10.6	PRESCRIPTION SAFETY GLASSES .....	15
<b>ARTICLE 11 - MISCELLANEOUS CONTRACT PROVISIONS .....</b>		<b>15</b>
11.1	COPIES OF AGREEMENT .....	15
11.2	NONDISCRIMINATION.....	15
11.3	FEE WAIVERS .....	16
11.4	PARKING.....	16
11.5	DEPENDENT PARTIAL TUITION WAIVER.....	16
11.6	OUTSOURCING OF BARGAINING UNIT WORK.....	17
<b>ARTICLE 12 - GRIEVANCE PROCEDURE AND ARBITRATION .....</b>		<b>17</b>
12.1	GRIEVANCE DEFINITION.....	17
12.2	PROCEDURES FOR FILING GRIEVANCES .....	17
12.3	ARBITRATION .....	18
12.4	RULES OF GRIEVANCE PROCESSING .....	19
<b>ARTICLE 13 - EFFECT OF AGREEMENT .....</b>		<b>20</b>
13.1	FINANCIAL AND LEGISLATIVE CONTINGENCIES.....	20
13.2	SAVINGS CLAUSE.....	20
13.3	INTERIM AGREEMENT .....	20
<b>ARTICLE 14 - TERM OF AGREEMENT .....</b>		<b>21</b>
14.1	CONTRACT TERM.....	21
<b>ADDENDUM A.....</b>		<b>22</b>
<b>ADDENDUM B.....</b>		<b>23</b>
<b>INDEX.....</b>		<b>29</b>

## **ARTICLE 1 - RECOGNITION**

### **1.1 PARTIES TO THE AGREEMENT**

This agreement is entered into by the Montana Board of Regents of Higher Education hereinafter referred to as the Employer, and Local No. 400 of the International Union of Operating Engineers, hereinafter referred to as the Union.

### **1.2 RECOGNITION**

The Employer recognizes the Union as the sole and exclusive bargaining representative of all employees in the bargaining unit. The Union recognizes the Board of Regents as the statutory governing body of the colleges of technology.

### **1.3 BARGAINING UNIT DEFINITION**

The bargaining unit shall include custodial, maintenance and food service employees who are employed at the colleges of technology in Billings, Butte, Great Falls, Helena and Missoula in positions and classifications within the bargaining unit as defined and certified by the Board of Personnel Appeals or as mutually agreed to by the parties.

### **1.4 EXCLUDED EMPLOYEES**

Part-time employees who are regularly scheduled for less than 20 hours per week are excluded from the bargaining unit. Two or more part-time employees will not be used to replace a bargaining unit employee in order to circumvent the provisions of the collective bargaining agreement. Part-time employees that work in excess of 120 consecutive days in a bargaining unit position shall be required, as a term and condition of employment, to pay union initiation fees and union dues or a representation fee to the Union.

Student employees are excluded from the bargaining unit, however, students shall not be hired into any bargaining unit positions which causes the permanent displacement of an employee or the reduction of the number of regular hours of employment of an employee.

Temporary employees are excluded from the bargaining unit unless they work in excess of four consecutive months in positions and classifications listed in Addendum A. Temporary employees will not be used to replace a bargaining unit employee on a permanent basis in order to circumvent the provisions of the collective bargaining agreement.

Part-time and temporary employees shall receive a rate of pay established by the classifications and pay established in Addendum A.

Confidential, supervisory and managerial employees are excluded from the bargaining unit.

## **ARTICLE 2 - UNION RIGHTS**

### **2.1 UNION SECURITY**

- A. Employees covered by the terms of this agreement shall not be required to become members of the Union, but must, as a term and condition of employment, pay a representation fee or follow the procedures for non-association with a labor organization on religious grounds found at § 39-31-204, Mont. Code Ann. Upon request the Union agrees to provide documentation to the Employer that its representation fee rate is established in accordance with law.
  
- B. All employees covered by the terms of this agreement shall within 30 days of the approval of this agreement, or within 30 days of employment, whichever is later, pay to the Union initiation fees and union dues or a representation fee in an amount determined by the Union. Employees who fail to comply with this requirement shall be discharged by the Employer within seven days after receipt of appropriate written notice of default by the Union. The Union may make written notice of default and demand for discharge after the 30 day period specified above. The Employer shall initiate appropriate discharge actions under this section to insure discharge of the affected employee(s) on the seventh day from receipt by the Employer of the Union's written notice of default and demand for discharge.

## **2.2 DUES CHECKOFF**

The Employer shall, without charge, deduct union dues from the salary of each employee who authorizes such deductions in writing in accordance with § 39-31-203, Mont. Code Ann. The aggregate deductions shall be remitted together with an itemized statement to the appropriate union officer. Employees may revoke their authorization for dues deduction at any time by giving the Employer 30 calendar days notice of such revocation. The Employer shall deliver the dues monies to the appropriate officer of the Union. Within 30 days from the effective date of this agreement, the Union shall notify the Employer of the name and mailing address of the appropriate officer who is to receive dues monies.

## **2.3 INDEMNIFICATION**

The Union will indemnify and hold the Employer harmless against any and all expenses and liability which may arise as a result of the operation of this article.

## **2.4 UNION ACTIVITIES PROTECTED**

Employees shall not be discharged or discriminated against for upholding union principles or rights which are granted to them under state or federal law and which are not restricted in this agreement.

## **2.5 JOB STEWARDS**

The Union may appoint an employee to serve as a steward who shall be recognized by the Employer as having authority to report irregularities in the application of this agreement to the Union and to assist the Union staff in the resolution of grievances. The job steward does not have the authority to tell employees to refuse to carry out the directives of the Employer or to interrupt or stop any work.

## **2.6 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 may 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.

### **ARTICLE 3 - MANAGEMENT RIGHTS**

#### **3.1 MANAGEMENT RIGHTS**

The Employer retains all rights and prerogatives which are not specifically limited or relinquished by the express language of this agreement. Employer rights include but are not limited to the following:

- 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.

(§ 39-31-303, Mont. Code Ann.)

## **ARTICLE 4 - NO STRIKES**

### **4.1 STRIKES PROHIBITED**

There shall be no strikes, slowdowns or other work stoppages on the part of the Union and there shall be no lockouts by the Employer during the term of this agreement.

## **ARTICLE 5 - COMPENSATION**

### **5.1 PAY SCHEDULE**

The pay schedule which establishes the rate of employee compensation is included in Addendum A and is hereby incorporated into this agreement. Employees will be classified and compensated in accordance with the Montana University System Staff Compensation Plan.

### **5.2 WAGE WITHHOLDING**

The Employer shall have the right to withhold from wages or any other funds due and payable to an employee any amount the employee owes the Employer or which the employee has unjustly received from the Employer in accordance with the provisions of state law. Unresolved differences regarding implementation of this provision shall be subject to the grievance procedure.

### **5.3 INSURANCE COVERAGE**

The Employer contribution to health insurance for full-time and permanent part-time employees working 20 or more hours a week shall be \$590.00 per month for the fiscal year ending June 30, 2008, and \$626.00 per month for the fiscal year ending June 30, 2009. Permanent half-time employees and employees who regularly work more than six months in any 12-month period are eligible for coverage under the Montana University Group Health Insurance Program. The Employer will continue to make insurance contributions on behalf of employees 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. Once an employee has received four months of the Employer contribution to health insurance while on a Workers'

Compensation leave of absence, the employee must wait an additional two years before becoming eligible to receive this benefit for a second time.

#### **5.4 RETIREMENT**

Employees' participation in the statutory public employees retirement programs shall be in accordance with statute. Employees who have questions concerning their retirement should contact the campus human resources/payroll office.

#### **5.5 PAY DAYS**

The Employer shall establish regular pay days which may only be modified in exceptional circumstances. The Employer may change to an every other week pay day.

#### **5.6 UNION PENSION PLAN**

If all employees at any college of technology desire to participate in the Union pension plan, the Employer will execute the required agreement and make the agreed upon contribution to the fund in lieu of wages. All contributions to the pension shall be made to and information regarding the pension shall be obtained from:

Montana Operating Engineers' Trust Fund  
P.O. Box 31278  
Billings, Montana 59116

#### **5.7 TEMPORARY ASSIGNMENTS TO HIGHER CLASSIFICATION**

Employees may be temporarily assigned the responsibilities of a higher classified 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 his/her former position and salary at the end of the temporary promotion. Employees temporarily assigned to a higher classified position shall be paid in accordance with the Montana University System Staff Compensation Plan rules. Employees may be temporarily assigned to a higher graded position in accordance with this

section for up to two consecutive working days before becoming eligible to receive a temporary salary increase. In such instances, employees will be paid from the first day.

### **5.8 LONGEVITY**

Each employee who has completed five years of uninterrupted state service shall receive 1.5% of their base salary multiplied by the number of completed, continuous five-year periods of uninterrupted state service, in accordance with state statutes, for the first, second, fifth and sixth increments, and shall receive 2% for the third and fourth increments.

## **ARTICLE 6 - HOURS OF WORK AND OVERTIME**

### **6.1 WORK DAY/WORK WEEK**

The normal straight time work day shall be eight consecutive hours, exclusive of a lunch period. A normal work week shall consist of 40 hours worked in five consecutive days. Nothing in this agreement shall be construed to guarantee employees an eight-hour day, 40-hour work week.

### **6.2 ALTERNATE WORK SCHEDULE**

Temporary adjustments to a work week schedule which may include work days in excess of eight hours may be made through mutual agreement between the affected employees and the Employer. When alternate work schedules are agreed to, only those hours in excess of 40 hours per week will be considered overtime and paid at one and one-half times the normal rate.

The Employer must give ten working days' notice of any long-term change in the employee's regular work schedule, or such change may be implemented by mutual agreement between the employee and employer. "Long-term" is defined as ten working days or more. When alternate work schedules are implemented, only those hours in excess of the scheduled work day or 40 hours per week will be considered overtime and paid at one and one-half times the normal rate.

### **6.3 MEAL PERIODS**

No employee shall be required to work longer than five consecutive hours without being granted either an unpaid meal period of at least one-half hour, or an opportunity to consume a meal during working hours.

### **6.4 REST BREAK**

Employees shall be allowed a 15-minute rest break in the approximate middle of each four-hour shift.

### **6.5 OVERTIME**

When an employee is required to work in excess of eight hours per shift or in excess of 40 hours per week, the employee shall receive overtime at the rate of one and one-half times the normal rate of pay for all overtime worked. All overtime and compensatory time must be approved in advance by the Employer.

### **6.6 CALL BACK**

Employees who are called back to work after completing their regular eight-hour shift or 40-hour work week shall be paid for a minimum of two hours at the rate of one and one-half times the regular rate of pay. It is understood that this provision does not apply to work which occurs immediately prior or immediately after the work day.

### **6.7 COMPENSATORY TIME**

Upon termination or death, any unused compensatory time will be paid to the employee at the regular rate of pay at the time of termination or death, or the average regular rate of pay received by the employee during the last three years of the employee's employment, whichever is higher. A college of technology may establish other timeframes in which compensatory time must be used or will be cashed out.

- 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.
- D. Payment on Termination. If employment is terminated, any unused compensatory time will be paid to the employee at the regular rate of pay at the time of termination, or the average regular rate received by the employee during the last three years of the employee's employment, whichever is higher. The employing center may establish other timeframes in which compensatory time must be used or will be cashed out.

## **6.8 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. Coveralls will be made available for exceptionally dirty work.

## **ARTICLE 7 - LEAVES OF ABSENCE**

### **7.1 ANNUAL VACATION LEAVE**

Employees shall be eligible for annual vacation leave in accordance with state law and applicable regulations. A copy of the state law governing annual vacation leave is included in Addendum E.

Employees will be allowed to split their vacation periods, however, the Employer may limit the amount of vacation which may be taken at any one time. Employee's choice of vacation periods will be based on seniority, the choice must be made no later than April 30 each year. Such choices are subject to the approval of the Employer and must be registered with the Employer and posted in a conspicuous place. Employees who fail to make their choice as of April 30 will

relinquish their right to vacation choice based on seniority. Requests for additional vacation after April 30 are subject to the approval of the Employer on a first-come first-served basis.

## **7.2 SICK LEAVE**

Employees shall be eligible for sick leave in accordance with state law and applicable regulations. A copy of the state law governing sick leave is included in Addendum E.

- A. Immediate Family Illness Leave: Sick leave may be used for the necessary care of or attendance to the illness of an immediate family member until other attendance can reasonably be obtained. Immediate family includes the employee's spouse, parent, child, grandparent, grandchild or corresponding in-law or another member of the employee's household.
  
- B. Bereavement Leave: Sick leave may be used for the death of or funeral attendance for an immediate family member.

## **7.3 JURY AND WITNESS LEAVE**

Employees who are summoned as a juror or subpoenaed as a witness shall be granted leave in accordance with state law and applicable regulations. A copy of the state law governing jury and witness leave is included in Addendum C.

## **7.4 MILITARY TRAINING LEAVE**

Military training leave shall be granted in accordance with state law and applicable regulations. A copy of the state law governing military leave is included in Addendum B.

## **7.5 PUBLIC SERVICE LEAVE**

An employee who is elected or appointed to a public office shall be entitled to a leave of absence without pay not to exceed 180 days per year in accordance with state law. A copy of the state law governing public service leave is included in Addendum B.

**7.6 MATERNITY LEAVE**

Employees shall be eligible for maternity leave in accordance with state law. A copy of the state law governing maternity leave is included in Addendum B.

**7.7 UNPAID LEAVE**

At the discretion of the Employer, an unpaid leave of absence may be granted employees for good and sufficient reasons.

**7.8 PROFESSIONAL LEAVE**

Upon request and approval, employees shall be granted a minimum of one day per year of time off with pay to attend self development, job enrichment, or safety-related training.

**ARTICLE 8 - HOLIDAYS**

**8.1 HOLIDAYS LISTED**

Eligible employees shall be granted the following paid holidays in accordance with state law and applicable regulations. Holiday benefits shall not exceed eight hours per holiday.

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

## **8.2 HOLIDAY EXCHANGES AUTHORIZED**

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

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

## **8.3 HOLIDAY ELIGIBILITY REQUIREMENTS**

Employees must be in a paid status (includes time on sick leave, annual vacation leave, or other paid leave) either the last regularly scheduled working day before or after a holiday is observed to be eligible to receive holiday benefits. An employee is not eligible to receive holiday benefits if the employee is a new employee and begins work on the day after a holiday is observed or if the employee is recalled from a layoff and returns to work on the day after the holiday is observed.

## **8.4 HOLIDAY PAY**

Eligible employees who are not required to work on an observed holiday shall receive a maximum of eight hours regular pay for the holiday. When an employee is required to work on an observed holiday, the employee will receive either two and one-half times the regular rate of pay or, upon agreement of the affected employee and the Employer, one and one-half times the regular rate of pay and an alternate day off to be taken at a mutually agreeable time.

# **ARTICLE 9 - PROBATION AND DISCHARGE**

## **9.1 PROBATIONARY PERIOD**

The first six months of employment of any employee newly hired to a position covered by this agreement shall be a period of probation. At any time during the period of probation an employee may be discharged at the sole discretion of the Employer and without any showing of

cause. The first 30 days for an employee promoted from one position covered by this agreement to another shall be a period of probation. If the employee does not satisfactorily complete the thirty day probationary period, the employee will be returned to the previous position. An employee who takes a new position at another college of technology must serve a new six month probationary period if the new position is within a different classification.

## **9.2 DISCHARGE OF EMPLOYEES**

Employees who have completed the probationary period may be discharged for just cause.

## **9.3 EMPLOYEE RECORDS**

The official personnel records for each employee shall be maintained in the Human Resource office. Employees shall have the right to review all materials within their personnel file upon reasonable request during regular business hours in the presence of a management representative. The employees may authorize a union representative to review their record upon submission of a written authorization to a management representative and in the presence of a management representative.

No other official personnel record will be kept by supervisors or management representatives. This provision shall not restrict said individuals from keeping administrative records with regard to employee action or transaction.

Before placement in the official personnel file of any material that is defamatory or derogatory in nature, the employee shall be supplied a copy of said material and allowed five working days to respond after receipt of said material.

Written reprimands shall be removed from the personnel file after one year, upon request of the employee. If the written reprimand 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 written reprimand. Written reprimands that are applicable to pending legal or quasi-legal proceedings may be retained in a separate file. Upon conclusion of the legal

or quasi-legal proceeding, the written reprimand shall be destroyed. Written reprimands are subject to the grievance procedure.

## **ARTICLE 10 - SENIORITY, LAYOFFS, AND VACANCIES**

### **10.1 SENIORITY DEFINED**

Seniority shall date from the first day of employment in a bargaining unit position and is available for use after completion of the probationary period. Seniority shall cease to accrue if an employee is laid off, transferred or promoted out of the bargaining unit or during a leave without pay in excess of 90 days except when the leave without pay is because the employee is called to active military service. Seniority shall be forfeited upon termination or after a layoff in excess of one year. However, if a person is reemployed in accordance with Workers' Compensation statute, § 39-71-317, Mont. Code Ann., veteran statute, § 10-2-221, Mont. Code Ann., or public service leave statute the employee's seniority date shall be the date of employment prior to the injury, or military or public service. Seniority is not transferable between colleges of technology.

### **10.2 SENIORITY IN HIRING**

When filling a vacant or newly-created position in the bargaining unit, where qualifications, skills and performance are equal, seniority shall prevail.

### **10.3 SENIORITY IN UNSCHEDULED LAYOFFS**

Layoffs shall be in order of seniority within a classification by campus within the bargaining unit. Employees shall be given a minimum of ten working days notice prior to an unscheduled layoff.

### **10.4 SCHEDULED LAYOFF**

An employee's employment may be temporarily discontinued at certain specified times or intervals which are understood to be an inherent condition of employment. Upon expiration of the term specified, the employee shall be reinstated. Scheduled layoffs are not subject to the conditions outlined above for unscheduled layoffs.

### **10.5 RECALL TO EMPLOYMENT**

Employees shall be recalled to their former position in reverse order of layoff. Employees will be eligible for recall for one year from the date of layoff. The laid off employee shall be notified at their last known address by certified mail of any recall to employment. If the employee fails to communicate acceptance of a recall to employment within 14 calendar days from the date of the mailing of the notice of recall to the employee's last known address, the employee shall be considered as having forfeited any right to reemployment.

### **10.6 PRESCRIPTION SAFETY GLASSES**

Prescription safety glasses will be furnished by the Employer subject to the following conditions: the Employer retains the authority to determine the need based on assigned job duties and 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.

## **ARTICLE 11 - MISCELLANEOUS CONTRACT PROVISIONS**

### **11.1 COPIES OF AGREEMENT**

Upon final ratification and approval of this agreement, the Employer shall prepare and make available to the bargaining agent and each employee a copy of the agreement. It is the responsibility of the Employer to furnish copies of the agreement to supervisors and it is the responsibility of the Union to furnish copies to employees.

### **11.2 NONDISCRIMINATION**

Neither the Employer nor the Union shall discriminate on the basis of race, creed, religion, color or national origin or because of his age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical, or mental disability, marital status or sex distinction.

Neither the Employer nor the Union shall discriminate against employees because of union membership or non-membership. No employee shall be discharged or discriminated against for upholding union principles or rights granted them under state or federal law unless otherwise

restricted in this agreement. An employee serving on a board or committee shall not be discontinued from employment or be discriminated against for that reason.

Employees who file a complaint alleging unlawful discrimination under state or federal complaint procedures may not file a contractual grievance over the same matter.

### **11.3 FEE WAIVERS**

Any permanent employee who works at least three-quarter time (.75 FTE) shall be entitled to a waiver of fees in accordance with Board of Regents policy. The Employer may limit the number of courses an employee may take, and access to courses shall be on a space available basis.

When a course which an employee desires to take is offered only when the employee is scheduled to work, the employee must obtain advance approval from the supervisor and may take leave without pay for all hours absent from the regular work schedule or make up the time absent from work.

### **11.4 PARKING**

Employees will not be required to pay a parking fee during the term of this agreement without prior negotiations with the bargaining agent.

### **11.5 DEPENDENT PARTIAL TUITION WAIVER**

Subsection A. Permanent employees must be employed at least  $\frac{3}{4}$  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, and financially dependent children as defined by the Internal Revenue Code who are unmarried and under age 24.

Subsection B. The tuition waiver benefit for dependents shall be for 50 percent of the residential tuition. In no case may registration, course fees or any other mandatory or miscellaneous fees be waived. Dependents may utilize the tuition waiver benefit to take courses at a college of

technology or in any other two-year or certificate programs and to obtain a first baccalaureate degree at any unit of the university system. Dependents may not use the tuition waiver benefit to attend law school or obtain a graduate degree. The tuition waiver does not apply to non-credit, continuing education or other self-supporting courses.

#### **11.6 OUTSOURCING OF BARGAINING UNIT WORK**

The Employer shall not reduce the wages or work hours of bargaining unit members in a material or significant manner through the contracting out of bargaining unit work without providing the union sufficient notice and opportunity to bargain the subject in good faith. The Employer shall comply with all bargaining obligations required by Montana's collective bargaining act for public employees.

### **ARTICLE 12 - GRIEVANCE PROCEDURE AND ARBITRATION**

#### **12.1 GRIEVANCE DEFINITION**

A grievance is defined as an allegation that there has been a violation or misinterpretation of a provision of the agreement.

#### **12.2 PROCEDURES FOR FILING GRIEVANCES**

All grievances must be filed within ten days following the act or omission giving rise to the grievance or within ten days after the employee should have reasonably known of the circumstances which gave rise to the grievance. Prior to the filing of a formal grievance the employee with a grievance should discuss their grievance with their immediate supervisor and attempt to resolve the matter.

Step 1: If the grievance is not resolved informally after discussion with the immediate supervisor, a formal grievance may be presented in writing by the employee to the Dean within ten days following the act of omission giving rise to the grievance. The Dean or his/her designee shall conduct a meeting with the grievant no later than ten days following receipt of the

grievance. The Dean shall issue a written decision within ten days following the conclusion of the meeting.

Step 2: If the grievance has not been settled at Step 1, then within ten days after receipt of the written decision of the dean or his/her designee or expiration of the limits for making such decision, the employee may submit the written grievance to the designated personnel office, together with a copy of all materials submitted or received at prior steps. The designated personnel office shall, within 15 days after receipt of the grievance, issue a decision in writing to the employee.

Step 3: If the grievance has not been settled at Step 2, then within ten days after receipt of the personnel office's written decision the bargaining agent may submit a written request to the Commissioner of Higher Education to have the grievance heard by a grievance committee. Upon receipt of such request, 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. Any decision concurred in by a majority of the members of the grievance committee is final and binding and may not be appealed to arbitration.

### **12.3 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 Commissioner of Higher Education within ten days from the date the decision was due. The written request for arbitration must be signed by the grievant and the Union business agent. Only those alleged violations of the agreement identified in Steps 1 or 2 may be considered as arbitration.

- A. Selection of an Arbitrator. If the Union and the Employer cannot agree upon an acceptable arbitrator, they shall forward a joint written request to the Federal Mediation

and Conciliation Service to provide a list of names of seven arbitrators. Each party shall alternatively strike names from the list until only one name remains. The remaining person shall be designated the arbitrator.

- B. Arbitrator's Authority. The arbitrator shall not have the power to add to, detract from, modify or amend this agreement in any way.
- C. Decision Binding. The decision of the arbitrator shall be final and binding upon the Employer, the employee grievant, and the Union.
- D. Arbitration Expenses. Each party shall be responsible for the fees and expenses of presenting its own case. The fees and expenses of an impartial arbitrator shall be shared equally between the parties. In the event one of the parties wants a transcript of the arbitration proceedings, the party requesting the transcript shall pay the cost of such transcript.

#### **12.4 RULES OF GRIEVANCE PROCESSING**

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 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.

Grievance Mediation. Upon agreement of the parties, grievance mediation may be used as an alternative to or prior to arbitration.

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

Union Representation. The employee grievant may be represented by the Union at any step of the grievance procedure.

Grievance Meetings. Either party may initiate a meeting to discuss the grievance at any step of the procedure.

## **ARTICLE 13 - EFFECT OF AGREEMENT**

### **13.1 FINANCIAL AND LEGISLATIVE CONTINGENCIES**

In the event the budget request of the university system educational units 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 or should the appropriation be reduced during the term of this agreement, this agreement may be reopened for renegotiation by the Employer as to any portion for which the performance of which is contingent upon availability of financial resources. Should the legislature alter or amend a statutory provision contained in this agreement those clauses of the agreement affected by legislative action may be opened for renegotiation by either party.

### **13.2 SAVINGS CLAUSE**

Should any portion of this agreement be determined unlawful, invalid, or unenforceable by a competent authority, that portion of the agreement declared invalid shall be null and void, however, the rest of the agreement shall remain in full force and effect and either party may request negotiations to seek agreement on a mutually satisfactory replacement for that invalidated or unenforceable portion.

### **13.3 INTERIM AGREEMENT**

This is the sole and complete agreement between the parties and supersedes all prior agreements, understandings, and practices, oral or written, express or implied. Each party hereby waives the right to insist that the other party bargain collectively during the life of this agreement with respect to any questions of wages, hours, fringe benefits, or other conditions of employment.

Changes to this agreement may be negotiated only upon mutual agreement of the parties to this agreement. Any agreed to changes shall be made effective upon any date agreed upon by both parties. In order for any changes to be effective, they must be set down in writing, and approved and signed by the Union and the Commissioner of Higher Education.

## **ARTICLE 14 - TERM OF AGREEMENT**

### **14.1 CONTRACT TERM**

This contract shall be in effect from ten working days after the date of ratification or July 1, 2007, whichever is later, and shall continue until and including June 30, 2009, and shall be considered renewed from year to year thereafter unless either party to this agreement notifies the other party in writing on or before March 30, 2009, of its desire to modify or terminate this agreement.

## ADDENDUM A

### Wage Increases:

Effective July 2007, the 10-year longevity increment shall increase from 1.5% of base salary to a new rate of 2% of base salary, consistent with the state employee compensation statute.

Effective October 1, 2007, members of the bargaining unit hired on or before September 30, 2007, shall receive a base wage increase of 3.6%.

Effective October 1, 2008, members of the bargaining unit hired on or before September 30, 2008, shall receive a base wage increase of 3.6%.

For insurance-eligible employees, an increase in the employer's premium contribution from the current rate of \$557 per month to a new rate of \$590 in July 2007; and from \$590 to \$626 in July 2008.

### Minimum entry rates of pay for newly hired employees as of October 1, 2007:

<u>Job Title</u>	<u>Entry</u>
Maintenance Worker I	9.192
Maintenance Worker II	10.022
Maintenance Worker III	10.924
Maintenance Supervisor I	13.638
Culinary Services Assoc. I	8.25
Culinary Services Assoc. II	8.992
Culinary Services Supv. II	10.468
Custodian I	8.25
	8.43 (Billings only)
Custodian II	8.992
Equipment Supply Tech I	8.25
Equipment Supply Tech II	9.600

**ADDENDUM B**  
**STATE STATUTES**

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.

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

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

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.

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;

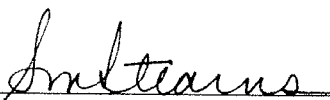
(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(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

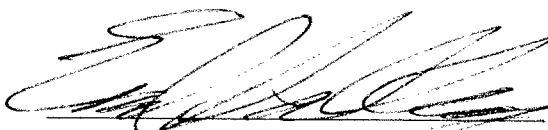
(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.


DATED this 17<sup>th</sup> day of September, 2007.

**FOR THE MONTANA BOARD OF  
REGENTS OF HIGHER EDUCATION:**

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

**FOR THE INTERNATIONAL UNION  
OF OPERATING ENGINEERS:**

  
\_\_\_\_\_  
Earl Salley  
Assistant Business Manager

  
\_\_\_\_\_  
Kevin McRae  
Director of Labor Relations

\_\_\_\_\_

## INDEX

Accrual Rate (Compensatory Time)..... 8	LEAVE, Annual Vacation ..... 9
ALTERNATE WORK SCHEDULE..... 7	Leave, Bereavement..... 10
ANNUAL VACATION LEAVE..... 9	Leave, Immediate Family Illness ..... 10
ARBITRATION ..... 18	LEAVE, Jury and Witness ..... 10
Arbitration Expenses..... 19	LEAVE, Maternity..... 11
Arbitrator, Selection of an..... 18	LEAVE, Military Training..... 10
Arbitrator's Authority..... 19	LEAVE, Professional..... 11
BARGAINING POOL LEAVE..... 3	LEAVE, Public Service ..... 10
BARGAINING UNIT DEFINITION ..... 1	LEAVE, Sick ..... 10
Bereavement Leave..... 10	LEAVE, Unpaid..... 11
CALL BACK ..... 8	LEAVES OF ABSENCE..... 9
COMPENSATION ..... 5	LONGEVITY ..... 7
COMPENSATORY TIME ..... 8	MANAGEMENT RIGHTS ..... 4
Compensatory Time, Use of ..... 9	MATERNITY LEAVE..... 11
CONTRACT TERM..... 21	Maximum Accumulation (Compensatory Time)..... 9
COPIES OF AGREEMENT ..... 15	MEAL PERIODS..... 8
Decision Binding (Arbitration)..... 19	MILITARY TRAINING LEAVE..... 10
DISCHARGE OF EMPLOYEES ..... 13	NONDISCRIMINATION..... 15
DUES CHECKOFF ..... 3	OVERTIME..... 8
EXCLUDED EMPLOYEES ..... 1	PARKING..... 16
FEE WAIVERS ..... 16	PARTIES TO THE AGREEMENT..... 1
FILING GRIEVANCES, Procedures for.. 17	PAY DAYS..... 6
FINANCIAL AND LEGISLATIVE	PAY SCHEDULE..... 5
CONTINGENCIES ..... 20	Payment on Termination (Compensatory Time)..... 9
GRIEVANCE DEFINITION..... 17	PROBATIONARY PERIOD..... 12
Grievance Mediation..... 19	PROFESSIONAL LEAVE..... 11
Grievance Meetings ..... 20	PROTECTIVE CLOTHING OR
GRIEVANCE PROCESSING, Rules of... 19	UNIFORMS..... 9
Grievances, Written ..... 19	PUBLIC SERVICE LEAVE..... 10
HOLIDAY ELIGIBILITY	RECALL TO EMPLOYMENT ..... 15
REQUIREMENTS ..... 12	RECOGNITION ..... 1
HOLIDAY EXCHANGES AUTHORIZED	REST BREAK ..... 8
..... 12	RETIREMENT ..... 6
HOLIDAY PAY ..... 12	SAVINGS CLAUSE..... 20
HOLIDAYS ..... 11	SCHEDULED LAYOFF ..... 14
Immediate Family Illness Leave..... 10	SENIORITY DEFINED ..... 14
INDEMNIFICATION..... 3	SENIORITY IN HIRING ..... 14
INSURANCE COVERAGE..... 5	SENIORITY IN UNSCHEDULED
INTERIM AGREEMENT ..... 20	LAYOFFS..... 14
JOB STEWARDS..... 3	SICK LEAVE ..... 10
JURY AND WITNESS LEAVE ..... 10	
LAYOFF, Scheduled ..... 14	

STATE STATUTES ..... 23  
 STRIKES PROHIBITED..... 5  
 TEMPORARY ASSIGNMENTS TO  
 HIGHER CLASSIFICATION..... 6  
 Timeframes (Grievance)..... 19  
 UNION ACTIVITIES PROTECTED..... 3  
 UNION PENSION PLAN ..... 6

Union Representation..... 20  
 UNION RIGHTS ..... 2  
 UNION SECURITY ..... 2  
 UNPAID LEAVE ..... 11  
**WAGE INCREASES**.....22  
 WAGE WITHHOLDING..... 5  
 WORKDAY/WORKWEEK..... 7

## AMENDED LETTER OF AGREEMENT

TO CONTRACT EFFECTIVE JULY 1, 2007 THROUGH JUNE 30, 2009

by and between

THE MONTANA UNIVERSITY SYSTEM

and

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 400

This amended Letter of Agreement ("Amended Agreement") entered into this 8<sup>th</sup> day of August 2007 amends and restates the Letter Agreement ("the Prior Agreement"), entered into previously by and between the Montana University System, hereinafter referred to as "Employer", and International Union of Operating Engineers Local 400, hereinafter referred to as "Union", shall be considered as an addendum to and by reference herein, incorporated as part of the Labor Agreement executed by Employer and Union.

Effective the first full pay period following execution of the letter of agreement, for as long as this Amended Agreement remains unamended and unterminated, the Employer shall forward to the International Union of Operating Engineers Central Pension Fund Employer contributions in the amount of SEVENTY FIVE CENTS (\$.075) at the College of Technology Great Falls and SIXTY CENTS (\$.60) at the College of Technology Butte for the period July 2007 through June 30, 2009 per compensable hour of employment for each Operating Engineer Bargaining Unit employee employed at those two campuses.

Contributions forwarded to the International Union of Operating Engineers Central Pension Fund as set forth in this Amended Agreement, are so forwarded in recognition that the Montana University System and the members of the affiliated Union agree:


1. The International Union of Operating Engineers Central Pension Fund asserts that it is a non-contributory plan that will not accept employee contributions.
2. The statutory law of Montana permits the Employer to make contributions for members of a bargaining unit pursuant to a collective bargaining agreement involving a multiemployer pension plan qualified by the Internal Revenue Service. These Employer contributions are not considered as wages for purposes of computing the Employer or employee contributions to the mandatory Public Employees Retirement System, or for computing gross income for Federal and State Income Tax purposes as long as making such computations in this manner remains lawful.
3. The Montana University System is a public employer.
4. The bargaining unit employees have ratified the Amended and Prior Agreements, and therefore, as a condition of initial and continued employment, all affected employees must execute any forms required by the Employer in order to participate in the plan. Failure or refusal of the employee to execute any required forms shall be cause for immediate discharge. The Union agrees to indemnify, defend, and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued against the Employer as a result of any action taken or not taken by the Employer under this provision. Any employee forms that were prepared pursuant to the Prior Agreement and that are not appropriate under the Amended Agreement shall be considered rescinded.
5. Nothing contained in this or any other agreement or document precludes or prejudices the rights of the Employer from asserting that it has no liabilities under the provisions the Employee

Retirement Income Security Act (ERISA) or other applicable laws, rules or regulations, in the event of a partial or complete withdrawal or termination of the International Union of Operating Engineers Central Pension Fund or for the insolvency of such fund, including any such assertions that may be made under Section 414(h) of the I.R.S. Code as have been made in the past.

- B. The Employer shall forward contributions for collection periods consisting of each two consecutive payroll periods (four calendar weeks) of the Employer. The total amount due for each collection period shall be remitted in lump sum by the 20th day of the month following the end of each collection period. It is understood and agreed that the calendar year for the collections shall begin with the first day of the first full payroll period of January each year.
- C. In compliance with state or federal laws and regulations, the Employer agrees to sign a pension participation agreement and other forms or documents (as furnished by the Union) that may be necessary to effectuate and continue in existence the pension plan, to abide by such rules as may be established by the trustees of said trust fund to facilitate the determination of the hours for which contributions are due, the prompt and orderly collection of such accounts, and the accurate reporting and recording of such amounts paid on account of such employee of the bargaining unit.
- D. This Amended Agreement is premised on the assumption that it is in compliance with Montana State Statutes and applicable federal pension laws as interpreted by the state or federal courts and the Pension Benefit Guaranty Corporation. If competent legal authority determines that this Amended Agreement is not consonant with such laws, the parties shall attempt to meet to discuss any problems resulting from terminating this Amended Agreement prior to any such termination.

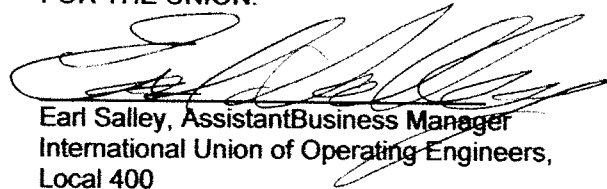
DATED This 17<sup>th</sup> day of September 2007.

FOR THE EMPLOYER:

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

  
\_\_\_\_\_  
Kevin McRae  
Director of Labor Relations and Personnel

FOR THE UNION:

  
\_\_\_\_\_  
Earl Salley, Assistant Business Manager  
International Union of Operating Engineers,  
Local 400