Memorandum of Understanding
Between the
University of Alaska and its Board of Regents
and the
University of Alaska Foundation

The Board of Regents of the University of Alaska and the University of Alaska ("University") and the Board of Trustees of the University of Alaska Foundation ("Foundation") enter into this Memorandum of Understanding ("Memorandum") to be effective on the 7th day of November, 2007.

WHEREAS, the University of Alaska is a constitutionally autonomous, educational corporation created under the laws of the State of Alaska responsible for oversight of the mission, leadership and operations of the University, and

WHEREAS, the Foundation is a separately incorporated Alaskan nonprofit organization independent of the University and operating as a charitable organization under section 501 (c) (3) of the Internal Revenue Code to raise and manage private funds exclusively for the benefit of the University, and

WHEREAS, in accordance with AS 14.40.400, AS 37.10.071, Board of Regents Policy 05.14.01- 02, .07, the Consolidated Endowment Fund Agreement dated June 29, 2005, and the Foundation’s Articles of Incorporation dated May 20, 1974, the Foundation is granted the authority to accept, hold, manage, and act as trustee for all monetary gifts received on behalf or for the benefit of the University, and

WHEREAS, the relationship between the University and the Foundation as to matters relating to the receipt, management, transfer and expenditure of funds should be clear and explicit;

NOW, THEREFORE, the University and the Foundation agree:

1. Foundation Name, Seal and Logotype
Consistent with its mission to advance the strategic plans and priorities of the University, the Foundation uses the name University of Alaska Foundation. The Foundation is also granted a nonexclusive license and authority to use the name, logos, and service marks of the University of Alaska and its major administrative units and campuses in the conduct of the Foundation’s work on behalf or for the benefit of the University.

2. The University’s Relationship to the Foundation
a. The Foundation’s chief executive officer shall be included as a member of the University President’s senior administrative team.
b. The University President, chancellors of the three major administrative units, and two members of the Board of Regents appointed by the Chair of the Board of Regents shall serve as voting members of the Foundation’s Board of Trustees.

c. All monetary gifts and the established value for real property and tangible personal property received by the University shall be reported promptly to the Foundation for receipt processing and recording.

d. The University President is responsible for communicating to the Foundation, the University’s strategic plans and priorities as approved by the Board of Regents.

3. Foundation Duties and Authority

a. The Foundation’s duty, as incorporated in its mission, is to advance the strategic plans and priorities of the University.

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

c. Unless expressly prohibited by the donor, all gifts made to or for the benefit of the University, will be accepted, held, and managed by the Foundation, except for 1) tangible personal property to be used directly for University programs or 2) real property. The net proceeds from the sales and leasing of donated real property will be transferred to the Foundation upon receipt of such funds by the University.

d. The Foundation shall properly receipt and record all gifts received by the Foundation or the University in accordance with state and federal tax law.

e. The Foundation shall be responsible for investment and administration of endowment funds in accordance with the most recent Consolidated Endowment Fund Agreement except as provided in subsection 3.f below.

f. Operating funds and endowments for which the Treasurer makes a determination that separate investment is in the financial best interest of the fund shall be invested in accordance with policies adopted by the Board of Trustees.

4. Cooperation and Alignment

a. The Foundation and the University will use their best efforts to establish and encourage a close and collaborative working relationship to further common investment and financial interests.

b. The Foundation and the University shall coordinate the fund-raising and donor acquisition programs that support the University’s strategic plans and priorities. These programs include, but are not limited to, annual giving, major gifts, planned gifts, special projects, and capital fund drives.
Memorandum of Understanding
University of Alaska and its Board of Regents and
The University of Alaska Foundation

c. All gifts accepted will be consistent with advancing the mission of the University, and the strategic plans and priorities established by the University.

d. The Foundation and the University, shall establish practices and procedures for development, gifting, gift receipting, endowment administration, investment, disbursement, and cross-charging for services that adhere to the terms and conditions of this Memorandum, the Consolidated Endowment Fund Agreement, and applicable federal and state laws.

5. Foundation Funds and Costs

a. The Foundation shall be responsible for establishing a financial plan to underwrite the cost of the Foundation's programs and operations.

b. In consideration for coordination and other services provided by the Foundation, including, but not limited to, gift receipt, record maintenance, investment and disbursement of University funds managed by the Foundation, and oversight of University development activities, the University will provide the Foundation with fair and reasonable compensation for such services. The compensation shall include indirect in-kind support such as office space, human resource services, risk management services, technology services and in-kind legal services when such legal services will not result in a conflict of interest for counsel. The amount of compensation will be negotiated annually no later than March 1 of the year preceding the start of the fiscal year when compensation is due.

c. The Foundation will maintain sound management practices and effective internal controls and will engage an independent accounting firm or firms to conduct an annual audit of the Foundation's financial records and periodically review its internal control systems.

d. The Foundation will provide the University President and Chief Financial Officer a copy of the annual audited financial statements, including all management letters, reports, and official communications from the auditors and regulatory agencies.

e. The University may at its discretion engage its own internal or external auditors to audit the records, accounts, and activities of the Foundation. The costs associated with such engagements shall be born solely by the University.

f. The University and the Foundation shall cooperate fully and shall direct their respective independent accounting firms and staffs to cooperate in conducting audits of the University's and the Foundation's annual financial statements.

6. Foundation Records and Confidentiality

a. Records

The Foundation shall maintain copies of the plans, budgets, and donor and financial records developed in connection with the performance of its obligations and will provide
access to such information to the University when the Foundation believes it is warranted and as may be required by law.

b. Confidentiality

i. The Foundation is a private corporation with the obligation and duty to keep all records and data confidential. The computer system (hardware, software, and data) used by the Foundation to operate, conduct its business, and accomplish the purposes for which it was established is owned by the Foundation.

ii. The Foundation may contract with the University to provide certain support services in connection with its recordkeeping and computer maintenance, but the Foundation shall have exclusive and sole responsibility for access to and use of the information maintained or contained on its systems except as may be provided elsewhere in this Memorandum of Understanding.

iii. (a) The Foundation shall establish and enforce policies to protect donor’s privacy and the separate rights of the Foundation and the University to protect the confidentiality of information regarding donors and potential donors. The Foundation may, in its sole discretion, allow access to information to University staff for Foundation or development needs as it deems appropriate. Any disputes regarding access to Foundation data or records shall be resolved by the Foundation’s Chair, or designee, in conjunction with the University President, or designee;

(b) Confidentiality in terms of non-disclosure to persons who are not employees, directors, trustees, or agents of the University, the Foundation, or a successor trustee shall be maintained in accordance with the terms of this Memorandum of Understanding. Donor records and development records contain information that could affect the value of investments or impair the ability to acquire, maintain, or dispose of investments and therefore must be kept confidential and exempt from public disclosure to the maximum extent allowed by law.

7. Human Resources

a. In order to provide consistent and coordinated leadership to the combined development efforts of the University and the Foundation the parties to this Memorandum intend for the University’s chief development officer to also serve as the Foundation’s chief executive officer. If the Foundation chooses to appoint another individual as its chief executive officer, it may do so at its sole discretion.

b. The joint chief development officer/chief executive officer shall report to the University President for administrative purposes and University activities and to the Board of Trustees and its Chair for Foundation activities.

c. When a single person serves both as the University’s chief development officer and as the Foundation’s chief executive officer, the coordinated annual work plans and performance expectations for the joint position shall be approved jointly by the University President, or designee, and the Chair of the Board of Trustees. Performance evaluations and
compensation decisions shall be conducted by the University President and the Board of Trustees Chair in accordance with University processes and procedures.

d. The University’s chief development officer shall select and supervise all development and advancement services staff providing services to the Foundation. The Board of Trustees Chair may request reassignment of any staff member providing services to the Foundation to other duties.

e. The Foundation Treasurer appointed by the President of the University of Alaska in accordance with Foundation By-Laws, will, in coordination with the Foundation CEO, select and supervise financial staff assigned by the University to provide services to the Foundation.

f. University employees, including the Foundation’s chief executive officer, assigned to provide services to the Foundation shall be subject to Regents’ Policy, University Regulation, and all other practices and procedures applicable to University employment as they may be amended from time to time. No compensation for services will be provided directly to University employees by the Foundation.

8. Term of this Memorandum of Understanding

a. This Memorandum shall be effective this 7th day of November, 2007.

b. This Memorandum shall terminate if the Foundation ceases to exist for any reason or ceases to be an Internal Revenue Code §501(c) (3) organization. In the event the Foundation defaults in the performance of its obligations and fails to cure such default within a reasonable time after receiving written notice, the Board of Regents may, by affirmative vote, terminate this Memorandum. Notice to the Foundation must be given to the Board of Trustees Chair and the Foundation’s chief executive officer. Notice is effective when actually received.

c. Upon termination of this Memorandum (1) the University will assume all debts and obligations incurred by the Foundation on behalf of the University including, but not limited to, lease obligations, loans, advances, and other debts and, (2) at the University’s request, the Foundation shall transfer all of its assets and property to the University or a successor trustee named by the University Board of Regents.


a. Amendment. This Memorandum may be amended at any time. Any amendment must be approved by the Board of Regents and the Board of Trustees.

b. Governing Law and Venue. This Memorandum has been adopted and shall be governed and construed in accordance with the laws of the State of Alaska. Any disagreements or lawsuits arising out of this Memorandum, after mandatory mediation, shall be brought in the Superior Court for the State of Alaska, Fourth Judicial District, in Fairbanks, Alaska.

c. Severability. If any part, term, or provision of this Memorandum is determined by a court or agency of competent jurisdiction to be unlawful or in conflict with the laws of
the United States or the State of Alaska, the validity of the remaining portion or provisions of the Memorandum shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Memorandum did not contain the particular part, terms, or provision held to be invalid.

d. No Assignment. This Memorandum is entered into based in consideration of the nature and responsibilities of the parties and their unique relationship to each other. No party shall assign all or any part of its interest in this Memorandum and any attempt at such assignment shall be void and may, at the sole discretion of the other party, terminate this Memorandum. Notwithstanding the above, the Foundation may delegate to one or more investment managers a portion of its powers, duties, and responsibilities with respect to investments, as appropriate, according to the provisions of this Memorandum and AS 37.10.071.
IN WITNESS WHEREOF, the parties have approved this Memorandum of Understanding by affirmative vote of their respective boards at duly authorized meetings and cause this Memorandum to be executed by their duly authorized officers as of the day and date first above written.

University of Alaska

Chair, Board of Regents
12/30/07

Date

University President
11-12-07

Date

University of Alaska Foundation, Inc.

Chair, Board of Trustees

Date

University President

Foundation President

11/7/07

11/7/07

11/7/07

Page 7 of 7
November 7, 2007