ITEM 134-1004-R0307 Approval of Proposed University System/Employee License Agreement; The University of Montana

THAT:

The Board of Regents of Higher Education approves The University of Montana-Missoula ("UM" herein) to enter into a Licensing Agreement with America’s Professor LLC ("AP" herein), a for-profit company in which UM faculty members Jack Morton and Jerry Furniss own all equity interests, subject to approval of the licensing agreement by the UM President and Commissioner of Higher Education. The Board of Regents further approves Professors Morton and Furniss serving as AP’s directors and officers, as well as working part-time as AP employees, while the proposed Licensing Agreement is in effect, subject to all UM and Board of Regents policies in effect or as adopted or amended and further subject to the approval of faculty conflict of interest management plans in accordance with UM and Board of Regents policy.

EXPLANATION:

Overview
Dr. Jack Morton and Dr. Jerry Furniss are full-time faculty employees of UM. They seek approval to hold equity in, to serve on the governing board of, and to serve as part-time employees of America’s Professor, a company which owns intellectual property developed and owned by Morton and Furniss, during the time AP maintains a licensing agreement with UM. (A copy of a proposed agreement is attached). AP will operate in accordance with a licensing agreement negotiated with UM. UM does not now, and will not, own an interest in the property or software developed by these employees, but the licensing agreement will provide to UM a share in the proceeds from all America’s Professor courses offered, whether they are taken for UM credit and for professional certification only.

Drs. Morton and Furniss, as well as others involved in this project, have disclosed their financial and personal interests in the project and written conflict of interest management plans are in place for Drs. Morton and Furniss. Under BOR Policy 407 and MCA § 20-25-109, Montana University System (MUS) employees must have BOR approval to serve as officers, employees, or members of a board of directors or governing board of any company or other entity which has an agreement with, or shares ownership of intellectual property with, the MUS, relating to the development, licensing or commercial exploitation of that intellectual property.

Background
Dr. Morton and Dr. Furniss have been offering business professional courses in a face-to-face format for many years as UM-approved external consulting activities. These courses target business professionals preparing for professional certification exams or
meeting professional continuing education requirements primarily in the real estate, insurance and securities fields. Morton and Furniss have previously done business as the Connole-Morton Real Estate School, through which entity they taught courses in real estate certification and insurance certification alternately several times each year. America’s Professor is now developing a computer platform allowing delivery of the course content using streaming video and text downloading. The proposed arrangement will allow AP to offer these courses through the AP-owned course delivery system as UM courses.

Course Offerings
Some of the courses will be available for academic credit. All classes taken for university credit will be subject to UM and BOR policies relating to academic classes, continuing education and distance learning. Students taking courses for credit will pay the course charge and a tuition charge. Net revenues from AP course fees and other AP revenue will be split between AP and UM on a 75%-25% basis.

America’s Professor will also offer AP courses on a non-credit basis for certification only. For such courses the net revenue will be split as indicated above. All courses will be delivered over the internet using an AP-proprietary state-of-the-art computer platform designed to deliver streaming video and text downloading. Additional business professional courses may be developed and offered in accordance with the licensing agreement and UM policy.

The training courses offered will be targeted to the business professional and not to existing UM students. UM is not now able, and has not been able for the last 30 years, to expand its business curriculum to include business professional development and training classes because the School of Business Administration’s first priority for its limited faculty resources is to meet the teaching demands for its undergraduate and graduate course offerings. Thus this project contemplates bringing in new dollars from new students and is not intended to compete for UM’s existing students.

Fiscal Issues
Revenue will be generated from three sources: course registration fees, tuition, and the sale of supplemental online training material developed by AP. AP will bear 100% of the operating expenses up to the breakeven point, estimated to be approximately 1400 students annually. Above the breakeven point, AP will be entitled to a 12% instructors’ fee per course computed after expenses and 75% of the net revenue from the project. Tuition will not be included in AP gross revenues, but UM will pay to Drs. Morton and Furniss an amount (approximately $4,000) for development of each online course offered for credit and an amount (approximately $2,000) for
teaching such a course, pursuant to existing UM practice.

In exchange for AP’s development and maintenance of the platform and use of the course materials, UM will contribute indirect costs associated with the limited use of film production facilities and building space allocation in the School of Business Administration (valued at FMV) and will allow the use of the UM name and logo on the AP website, in accordance with UM policies.

**Benefits to The University of Montana**

This project meets the stated purposes of BOR Policy 407: to enhance student learning opportunities, to attract resources for the support of unit programs, and to promote local, regional, and national economic development.

The arrangement will be beneficial to UM. First, it will attract resources for the support of UM programs. UM will reach a wider population than currently enrolled students. Because AP’s classes are targeted to the business professional, the revenue stream will be new. The potential net revenues are significant. Professors Morton and Furniss have an impressive track record in terms of attendance. Last year, the number of students taking the face-to-face classes exceeded 2,000. AP forecasts a larger online enrollment, but even the estimated net revenues from an enrollment of 2,000 would result in a positive cash flow to the university.

Second, UM will benefit from having quality professors delivering quality training to business professionals across the country, which will reflect positively on UM.

Third, student learning opportunities will be enhanced. Montana business professionals in remote locations will have ready access to high quality instruction needed for business professional licensure, certification and related needs from highly experienced UM Business School faculty without incurring the relatively high cost of leaving their homes and businesses to take the courses.

**ATTACHMENT:** Proposed Licensing Agreement
SUBMISSION FORM

University System/Employee Intellectual Property Joint Participation
MUSP 407

This form is to be submitted with any Board of Regents item whereby a campus seeks the approval of an agreement with or arrangement regarding an employee pursuant to 20-25-109 MCA and Regents Policy 407.

When the submission concerns matters of trade secrets or confidential business information, or any other matter entitled to privacy under state or federal law (e.g., the federal statute known as Bayh/Dole) the submitting campus may request consideration of the submission, in whole or in part, in executive session.

The submitting campus should also provide the Commissioner a copy of the contract(s) that form the basis for the cooperative arrangement for which approval is sought. Submission of the contract does not indicate a conclusion that all or part of the contract is a public document and the question of whether it is in whole or in part protected from public disclosure will be evaluated on a case by case basis.

1. Summarize the nature of the intellectual property that was developed by the employee seeking approval. Indicate the sources of funding for the research that resulted in this invention.

   The intellectual properties developed by The University of Montana School of Business Administration (SOBA) Professors Morton and Furniss are professional educational courses in the fields of real estate, insurance, and securities, among others, for professional licensure exam preparation, professional certifications and designations, and continuing professional education. Additional intellectual property includes a state-of-the-art online computer delivery system entirely designed and paid for by Morton and Furniss.

   No research funds were used to develop this intellectual property. The professors have, with University of Montana permission, operated an approved, private, external consulting for-profit business offering face-to-face exam preparation courses for professional certifications for many years. They are currently developing the proprietary course delivery system.

2. a. Name(s) of the university employee(s) involved.

   Jack Morton
   Jerry Furniss
   Other SOBA faculty to be contracted with as needed

b. Name(s) of business entity(ies) involved.

   America's Professors, LLC – a Montana limited liability company
3. The university and employee(s) are seeking approval for (check as many as appropriate):

- ☑ a. The employee to be awarded equity interest in the business entity.
- ☑ b. The employee to serve as a member of the board of directors or other governing board of the business entity.
- ☑ c. The employee to accept employment from the business entity.
- ☑ d. Other. Please explain. Royalty payments pursuant to the proposed Licensing Agreement.

4. a. Summarize the nature of the relationship between the university and the business entity (e.g., the entity is licensing the intellectual property from the university, the entity is co-owning the intellectual property with the university).

   The University of Montana and America’s Professors will be collaborating on offering these exam preparation classes and continuing professional education classes on-line. America’s Professors shall retain full ownership of the intellectual properties, but license the intellectual properties to UM to offer for UM credit. AP will offer the courses for certification only, or non-credit, in collaboration with UM. Access to the online courses shall be through AP’s proprietary computer platform with the approved use of the UM logo on the AP website. A 4-member committee comprised of Professors Morton and Furniss, the UM Business School Dean and the UM Continuing Education Dean, will prepare a comprehensive annual plan of proposed courses, proposed staffing for those courses, and a proposed AP program budget, which will be submitted to the UM Provost for approval. The UM Legal Counsel’s office will assist the committee to ensure compliance with all applicable laws. UM will handle all fee collections for these courses. Professors Morton and Furniss will work pursuant to individual conflict of interest management plans, and as stipulated in the proposed Licensing Agreement, will not reduce their regular faculty workload obligations as set forth in the UM faculty collective bargaining agreement.

   b. The proposed duration of the agreement or arrangement.

      An initial 5 year term – with a 2-year renewable option.

   c. The conditions under which the agreement may be terminated or dissolved.

      Material breach of the Agreement or Operating Costs significantly in excess of Gross Revenues over an 18 – 24 month time period. Or by 60-day termination notice given by either party to the other party.
5. Explain specifically how the University System or the State of Montana will likely benefit from the agreement or arrangement.

a. The University of Montana will benefit from having quality professors delivering quality training to professionals across the United States which will reflect the quality of this institution.

b. The University will receive 25 percent of all net revenues from non-credit certification course fees; and additional revenues from academic credit course fees as determined by Montana University System policy applicable to online academic credit courses. The potential net revenues derived from this arrangement are significant. The professors have an impressive track record in terms of attendance when offering these classes in a face-to-face setting. Last year, the number of students taking the face-to-face classes exceeded 2,000. At those numbers, the estimated net revenues from this arrangement would result in a positive cash flow to the University.

c. Montana business professionals in remote locations will have ready access to high quality instruction needed or desired for business professional licensure, certification, and related needs from highly experienced University Business School faculty without incurring the relatively high cost of leaving their homes and businesses to take the courses. In addition, those training courses approved for academic credit will enable a large number of Montanans to use these credits in pursuit of first or additional baccalaureate degrees.

d. The University will receive the benefit of valuable intellectual property created from the content of courses which have successfully been delivered, and will continue to be delivered, for many years. The reputation of these courses in Montana and nationally is very high, and the University will benefit directly by having these courses identified as University courses.

6. Summarize the financial terms of the agreement or arrangement. Include:

a. The value, nature and source of the University’s contribution.

The University of Montana School of Business Administration shall contribute office space, telephone lines, and film production facilities to this arrangement. The estimated value of the in-kind contribution is $24,000 annually, before inflation.

b. The value and nature of the employee’s contribution.

AP’s two principals (Morton and Furniss) are personally paying approximately $178,000 to design the electronic course delivery system. This amount will be recouped by AP from the Gross Revenue generated by the activities contemplated in this Agreement. In addition, AP will cover any and all revenue deficits in the unlikely event annual enrollment does not reach the estimated breakeven point of 1400 students.
c. The anticipated revenue to be generated by the project and the time line for generating such revenue.

If 2000 students enroll for non-credit on-line training in the first year, the estimated Gross Revenue is approximately $498,000. From this amount, Operating Expenses of $207,360 are subtracted, leaving $290,645 Net Revenue. The Net Revenue would go directly to reimbursing America’s Professor for the intellectual property development costs of $178,000, leaving in the first year, Net Revenue of $112,640 available to distribute to the parties. UM’s 25 percent share would be $28,160. Assuming a second year enrollment of 2000 students, the Net Revenue available to split would increase to $290,640. UM’s 25 percent share in the second year would be $72,660.

Academic credit expenses and revenues will be calculated separately based on The University of Montana and Montana University System policies applicable to online academic credit activities generally.

d. The manner in which revenue and expenses will be shared by the parties.

With regard to courses not offered for academic credit, Net Revenue will be split 75 percent to AP and 25 percent to UM. The Net Revenue is calculated by Total Revenue less Operating Costs. America’s Professor will be responsible for all non-UM Operating Costs.

With regard to courses offered for academic credit, revenue and expenses will be calculated and negotiated pursuant to The University of Montana and Montana University System policies applicable to online academic credit courses generally.

e. The nature of each party’s equity interest in the project. If none, so indicate.

America’s Professor – 75 percent of Net Revenue for non-credit course fees plus academic credit course fee revenues in an amount to be negotiated.

The University of Montana – 25 percent of Net Revenue plus academic credit course fee revenues in an amount to be negotiated.