

**GEOTHERMAL MINE WATER FOR THE
NATURAL RESOURCES BUILDING (NRB)**
(a.k.a. MBMG/Petroleum Engineering Building)

MONTANA TECH OF THE UNIVERSITY OF MONTANA, BUTTE
AE# 25-06-01-01

MEMORANDUM OF UNDERSTANDING & FINANCIAL AGREEMENT

THIS AGREEMENT is made and entered into this 4th day of September 2012, by and between the Department of Administration and Montana Tech of the University of Montana.

RECITALS

WHEREAS, the Department of Administration (through its Architecture & Engineering Division) is authorized by law [section 18-2-101 et seq. MCA] to manage, supervise and control the construction of all state buildings and facilities approved by the Montana Legislative Assembly; and

WHEREAS, the Fifty-Ninth Montana Legislature appropriated \$9,000,000 of bond funds and authorized \$5,400,000 of additional authority to the Department of Administration to build the Natural Resources Building (NRB) (a.k.a. the MBMG/Petroleum Engineering Building) at Montana Tech of the University of Montana; and

WHEREAS, the Sixtieth Montana Legislature appropriated an additional \$5,200,000 of cash funds to the Department of Administration, to supplement the project; and

WHEREAS, only the remaining balance of the \$5,400,000 additional spending authority (allowed to consist of Federal Special Revenue, Donations, Grants, and Higher Education Funds) provided to the Department of Administration by the 59th Legislature may be used as authorization for any and all portions the Geothermal Mine Water Project; and

WHEREAS, Montana Tech received a federal Department of Energy (DOE) grant in the amount of \$72,744 for the Phase 1 Feasibility Study and Grant Application Documents for Phase 2 submission to DOE to promote the use of geothermal mine water to supplement the heating and cooling systems in the NRB (MBMG/Petroleum Engineering Building); and,

WHEREAS, the Department of Administration has contracted with Kirk Engineering in the amount of \$60,000 for the Feasibility Study and Grant Application Documents utilizing the Phase 1 grant funds; and,

WHEREAS, Montana Tech has received a DOE Phase 2 grant in the amount of \$1,000,000 to be used for full design and construction activities to install the geothermal mine water system and connection to the NRB (MBMG/Petroleum Engineering Building) (see DOE Award No. DE-EE0002821); and,

WHEREAS, the total amount granted by DOE to Montana Tech is \$1,072,744 (49.8% of the aggregate), Montana Tech is fully responsible for the additional cost-share portion of \$1,082,753 (50.2% of the aggregate), and the total cost documented by DOE is the sum of \$2,155,497; and,

WHEREAS, Montana Tech is assuming full responsible for compliance with the DOE grant's cost-share portion of \$1,082,753; and,

WHEREAS, the Board of Regents of the Montana University System is empowered by Article X, Section 9, constitution of Montana to generally manage and control the Montana University System, and is specifically authorized by law [sections 20-25-301 et seq. MCA] to

pledge the payment of revenues received from student fees, activities, rents, exhibitions, performances, including gifts, bequests, contributions, and grants, both private and federal, for the acquisition and construction of facilities at university campuses; and,

THEREFORE, based on the above recitals and the terms and conditions stated in this agreement, the parties agree as follows:

1. The Department of Administration agrees to provide project management, construction documents, alternative delivery construction procurement, and to award the necessary contracts for the Project pursuant to the laws of the State of Montana and to take all other necessary action with regard to the construction of the Project pursuant to applicable law.
2. The Department of Administration shall amend Kirk Engineering's contract to include design and construction administration services.
3. The Department of Administration may solicit statements of qualifications and an alternative delivery contract if proposals comply with 18-2-503 MCA. The Department agrees to provide detailed written findings as required by 18-2-502(3) MCA.
4. Montana Tech authorizes the Department of Administration to spend from the \$1,072,744 DOE grant funds up to and including the amount of \$885,000. Montana Tech retains \$187,744 of the DOE grant funds for Project construction activities, services, and expenses that it undertakes.
5. Montana Tech shall be responsible for compliance with state statute and all DOE grant requirements, federal contracting requirements, and contract clauses for Project construction activities, services, and expenses it undertakes.
6. Montana Tech, as the DOE grant Recipient, is responsible for all requirements of the grant, including but not limited to, data collection, cost-sharing, grant monitoring, and reporting requirements to DOE. Montana Tech shall confirm that all project parameters are within the authority of the grant.
7. Montana Tech shall be responsible for assuring that the Architecture & Engineering Division has access to the appropriate plant fund in order to make all payments to contractors, consultants, and/or vendors throughout the course of the Project.
8. Montana Tech shall be responsible for assuring the appropriate plant fund has sufficient funding to meet all payment obligations. If insufficient funds occur, Montana Tech will transfer and deposit in the plant fund any non-state funds necessary to cover all Project obligations.
9. Montana Tech shall provide the Architecture & Engineering Division with all pertinent grant and federal contracting requirements and contract clauses that may be required prior to initiating construction of the Project.
10. Any remaining bonds and or cash funds appropriated by the 59th and 60th Legislatures shall not be used as part of the Project nor considered as meeting Montana Tech's cost-share responsibilities.
11. The Department of Administration and Montana Tech of the UM agree that the Department may, at its sole discretion after consultation with Montana Tech, alter the budget for the purposes of managing and administering the project funds as it deems necessary and appropriate and within the scope authorized by the Board of Regents and the Legislature.
12. In the event that any provision of this Agreement shall be determined to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Agreement, but the same shall be construed and enforced as if said illegality or invalid provision had never been inserted herein or therein. Notwithstanding anything contained herein to the contrary, no party to this Agreement will be required to perform or render any

services hereunder, the performance or rendition of which would violate any laws, rules or regulations, relating thereto.

13. This Agreement shall be construed in accordance with the laws of the State of Montana. Disputes will be resolved at the lowest level; if a disagreement cannot be resolved, the matter will be referred to the Administrator of the Architecture & Engineering Division, and the Chancellor of Montana Tech; any unresolved issues will be referred to the Governor for a final, binding decision.
14. This Agreement constitutes the sole and entire agreement between the parties and it is understood that no other representations or obligations not specifically contained herein shall be binding or enforceable. This Agreement may be amended only in writing and signed by both parties.

MONTANA TECH OF THE UNIVERSITY OF MONTANA

Don Blacketter, Chancellor, Montana Tech of the University of Montana

Date

DEPARTMENT OF ADMINISTRATION

Thomas O'Connell, Administrator, Architecture & Engineering Division

Date