

**BOBCAT ATHLETIC COMPLEX AND ACADEMIC EXCELLENCE CENTER CAPITAL PROJECT
MEMORANDUM OF UNDERSTANDING
BETWEEN
MONTANA STATE UNIVERSITY ALUMNI FOUNDATION AND
MONTANA STATE UNIVERSITY**

THIS BOBCAT ATHLETIC COMPLEX AND ACADEMIC EXCELLENCE CENTER CAPITAL PROJECT MEMORANDUM OF UNDERSTANDING (“MOU”) is dated for reference purposes [TBD], 2019 and is made by and between Montana State University Foundation, Inc., d/b/a Montana State University Alumni Foundation (“MSUAF”) and Montana State University (“MSU”).

RECITALS

- A. MCA § 20-25-309 permits the Montana University System’s Board of Regents (“BOR”) to lease land or land and facilities to a non-profit foundation organized to solicit, manage and administer nonstate funds, gifts, grants, donations, in-kind contributions, and revenue on behalf of a unit of the Montana University System for the purpose of constructing or renovating athletic facilities. MCA § 20-25-309 requires that the terms, guaranties, and agreements relating to such a facility must (i) be negotiated in the best interests of the State of Montana and must include guarantees that a commitment of state appropriations for design, construction, operations, or maintenance is not expressed or implied and (ii) be subject to review and approval by the Board of Regents (“BOR”).
- B. MSUAF is a non-profit foundation as contemplated by MCA § 20-25-309 whose mission is to cultivate lifelong relationships and secure private support to advance MSU.
- C. MSU has requested MSUAF to participate in the planning, design and construction of the Bobcat Athletic Complex and Academic Excellence Center (“Capital Project”). The Capital Project will include a new football operations building and related Bobcat Stadium improvements together with an academic excellence center within the Brick Breeden Fieldhouse, all in accordance with the approved 2017 Athletic Master Plan and a new Stadium Master Plan.
- D. The BOR authorizations for the Capital Project have been requested by MSU in two phases. By Item No. [REDACTED], adopted [REDACTED], 2019, the BOR granted approval of the project concept and of a form of the Capital Project Lease to be entered into by MSU as lessor and MSUAF as tenant. The final authorization by the BOR is expected to provide MSU authority to (i) enter into financial agreements with MSUAF for the Capital Project as set forth in this MOU and (ii) proceed with the actual construction of the Capital Project.
- E. In addition to this MOU, MSUAF and MSU shall concurrently enter into a Capital Project Lease as defined in Section 1.4 below.
- F. MSU and MSUAF have mutually agreed upon a Maximum Facility Cost of \$15,520,000 and a Total Project Cost of \$18,000,000.
- G. MSUAF and MSU have now been successful in securing bookable donor commitments for \$15,000,000 in private funding to construct the Capital Project. In addition, MSU will provide \$3,000,000 from non-state funds for the Capital Project, for total project funding of \$18,000,000.

- H. Some donor pledges for the Capital Project will be paid over time, not to exceed five years from the date of the pledge. However, MSU has determined that completion of the Capital Project prior to fulfillment of all pledges is critical to various aspects of its core mission, including supporting the academic success of members of MSU's student athlete community. Accordingly, MSU has requested MSUAF to provide Bridge Financing for the Capital Project.
- I. Pursuant to its Bridge Financing Procedure, MSUAF's Board of Governors has approved MSU's request for Bridge Financing for the Capital Project and has authorized its President and CEO to sign this MOU on behalf of MSUAF.

1.0 DEFINITIONS

- 1.1 **Bridge Financing** for MCA § 20-25-309 projects is the advance of funds to MSUAF's operating fund from MSUAF's Short Term Pool, Long Term Pool, or an external lender, or some combination thereof, to pay a portion of the Maximum Facility Cost for the Capital Project prior to the full collection of all Net Pledges.
- 1.2 **Bridge Financing Procedure** is the Bridge Financing Procedure for Athletics Capital Projects Subject to MCA § 20-25-309 as adopted by the MSUAF Board of Governors on April 24, 2019.
- 1.3 **Capital Project** is, for purposes of this MOU, the Bobcat Athletic Complex and Academic Excellence Center as described herein to be undertaken by MSUAF, as requested by MSU, on MSU's Bozeman campus. The term Capital Project is also more particularly defined in MSUAF's Bridge Financing Procedure.
- 1.4 **Capital Project Lease** is that certain Lease and Agreement entered into by MSU as lessor and MSUAF as lessee for those premises within the Bobcat Stadium and the Brick Breeden Fieldhouse within which MSUAF will cause the Capital Project to be designed and constructed and will be conveyed to MSU pursuant to Section 2.1 below.
- 1.5 **Long Term Pool** is the pool of assets managed by MSUAF intended to be invested for an indefinite period but no less than three years.
- 1.6 **Maximum Facility Cost** is the total of all design and construction costs plus any MSU and state fees required to fully complete the Capital Project, including all costs incurred prior to the date of this MOU. Unless specifically authorized by its Board of Governors, in the Board's sole discretion, MSUAF is not responsible for funding, and will not incur, any costs in excess of the Maximum Facility Cost for design and construction of the Capital Project.
- 1.7 **MSUAF Facility Fee** is assessed by MSUAF and is part of the Total Project Cost. This fee is 1.0% for projects with a Maximum Facility Cost greater than \$5,000,000. This fee will be assessed and payable at the time a construction bid for the Capital Project is accepted, as defined in the MSUAF Capital Projects Process.
- 1.8 **Net Gifts Collected** is the total of Capital Project related charitable gifts received and converted to cash by MSUAF, net of applicable MSUAF fees. Deferred gifts or other tangible personal property or real property gifts are not included in Net Gifts Collected unless they are converted to cash prior to the Reconciliation Date.
- 1.9 **Net Pledges** are the uncollected project-related, bookable pledges for the Capital Project received by MSUAF, reduced by the applicable MSUAF fees.

- 1.10 **Provision for Uncollectible Pledges** is MSUAF's estimate of the dollar amount of Net Pledges for the Capital Project that may never be collected. The Provision for Uncollectible Pledges is determined by MSUAF considering the number of pledges, the dollar amount, the source of pledges, the history of previous donor pledges, and any other factors MSUAF deems appropriate.
- 1.11 **Reconciliation Date** is the date for reconciliation of the Bridge Financing as set by MSUAF, not to exceed the expected date of receipt of the final Net Pledge. If the Bridge Financing is not repaid in full as of this date, MSUAF will reconcile Net Gifts Collected with expenditures and assess the collectability of the outstanding Bridge Financing balance. MSUAF shall assume responsibility for any shortfall of Net Gifts Collected.
- 1.12 **Short Term Pool** is the pool of assets managed by MSUAF that includes assets intended to be invested for no more than three years. The Short Term Pool includes MSUAF's operating cash as well as the spendable cash allocated to MSU to fulfill donor-designated purposes.
- 1.13 **Total Project Cost** for this Capital Project is defined as the total of:
 - 1.13.1 Maximum Facility Cost;
 - 1.13.2 Interest expected to accrue on any MSUAF Bridge Financing;
 - 1.13.3 The Provision for Uncollectible Pledges;
 - 1.13.4 All applicable MSUAF fees which may include gift, endowment management, and service fees; and
 - 1.13.5 The MSUAF Facility Fee.

2.0 ROLES AND RESPONSIBILITIES

- 2.1 For purposes of clarity, this Capital Project is being constructed pursuant to MCA § 20-25-309, which only applies to athletics projects. Accordingly, MSUAF's role in, and responsibility for, the design and construction of this Capital Project is specifically set forth in the Capital Project Lease that has been approved by the BOR and that has been or will be executed by MSU and MSUAF.
- 2.2 MSU, in connection with the Bridge Financing for this Capital Project, has the following responsibilities:
 - 2.2.1 MSU has, and continues to be, responsible for fulfilling its obligations in establishing the nature, scope and schedule of the Capital Project as set forth in the Capital Project Lease. In that regard, MSU will maintain open and regular communications with MSUAF throughout the course of the Capital Project.
 - 2.2.2 MSU is responsible for obtaining any necessary approvals for the Capital Project including the approval of the Montana University System's Board of Regents.
 - 2.2.3 MSU has reviewed and concurred in the Maximum Facility Cost for the Capital Project as set forth on the attached *Appendix A* and agrees that MSUAF can rely upon said amount in determining the viability of both fundraising and providing Bridge Financing for the Capital Project.
 - 2.2.4 Based on a mutual analysis prepared by MSU and MSUAF of the expected Capital Project costs, the schedule for the payment of such costs, and the expected timeline for receipt of Net Gifts Collected, MSU has requested MSUAF to provide Bridge Financing as more particularly described in *Appendix B*.

- 2.2.5 MSU may have other responsibilities as specifically set forth in the Capital Project Lease.
- 2.3 MSUAF, in connection with its fundraising, Bridge Financing, and management of this Capital Project, has the following responsibilities:
 - 2.3.1 MSUAF has determined that there is sufficient donor support for the Capital Project and has developed and implemented a fundraising strategy in cooperation with MSU.
 - 2.3.2 MSUAF has, in response to MSU's request for Bridge Financing, determined that completion of the Capital Project in advance of the receipt of all Net Pledges is critical to the achievement of significant MSU interests.
 - 2.3.3 MSUAF has, in cooperation with MSU, determined a mutually agreed Total Project Cost for the Capital Project, the calculation of which is set forth on the attached *Appendix A*.
 - 2.3.4 Based on the analysis described in Section 2.2.4 above, MSUAF's President & CEO and its Vice President of Financing & Accounting have provided an analysis of the viability of Bridge Financing for the Capital Project and have made a recommendation to MSUAF's Executive Committee which has in turn has been vetted by other MSUAF committees as appropriate.
 - 2.3.5 Based on the recommendation described in Section 2.3.4, MSUAF's Executive Committee determined that the Bridge Financing should be funded from [TBD: the Long Term Pool/Short Term Pool/External Borrowing], but only after at least 50% or more of the Total Project Cost has been received in cash by MSUAF from donors or other sources including, without limitation, \$3,000,000 of non-state funds committed by MSU.
 - 2.3.6 MSUAF's Board of Governors has reviewed the recommendation of its Executive Committee to raise the donor funds for the Capital Project and to provide the Bridge Financing as described in this MOU and has approved proceeding with the same.
 - 2.3.7 MSUAF will hold and manage donor funds designated for this Capital Project and will monitor and collect outstanding pledges using its standard procedures.
 - 2.3.8 MSUAF's President & CEO shall be the expenditure authority for the MSUAF fund 92748, Bobcat Athletic Complex and Academic Excellence Center, for the duration of the term of this MOU. The expenditure authority will review and authorize all expenditures before they are paid out of the MSUAF fund. Once the Total Project Cost is paid in full, expenditure authority will revert to the MSU Athletic Director.
 - 2.3.9 MSUAF may have other responsibilities as specifically set forth in the Capital Project Lease.

3.0 PROJECT SCHEDULE

- 3.1 For informational purposes, attached as *Appendix C* is an anticipated schedule for the Capital Project which includes (i) the expected date of design completion, (ii) the expected date of execution of primary construction contracts, (iii) the expected date of

commencement of construction and (iv) the expected date of substantial completion of the Capital Project (i.e., when it is placed in service.)

- 3.2 The Reconciliation Date for the Capital Project shall be TBD, 20____, the expected date of receipt of the final Net Pledge payment.

4.0 PROJECT COSTS

- 4.1 The agreed Total Project Cost for the Capital Project, including the components thereof described in Section 1.14, is set forth on the attached *Appendix A*
- 4.2 Under no circumstances will the agreed upon Maximum Facility Cost be exceeded, unless otherwise agreed to in advance and in writing by both MSUAF and MSU, each in their own discretion.
- 4.3 In calculating the Total Project Cost, MSUAF has determined a Provision for Uncollectible Pledges as set forth on the attached *Appendix A*, which is approximately TBD% of the open pledges as of the date of this MOU. Once all Net Pledges are collected and if MSUAF determines that the amount of uncollectible pledges will be less than anticipated, the parties shall work cooperatively to utilize these funds for additions to, or enhancements of, the Capital Project as proposed by MSU.
- 4.4 If the amount of the Provision for Uncollectible Pledges as set forth on the attached *Appendix A* is less than the actual amount of uncollectible pledges, MSUAF shall be responsible for the shortfall of Net Gifts Collected.

5.0 FUNDING SOURCES

- 5.1 MSU has committed \$3,000,000 of non-state funds for the Capital Project.
- 5.2 \$15,000,000 in private funding in either bookable pledges or cash has been collected by both MSU and MSUAF for the Capital Project.
- 5.2.1 \$TBD of Net Gifts Collected is available as of the date of this MOU.
- 5.3 \$TBD total of Net Gifts Collected, gifts received directly by MSU, and the non-state funds committed by MSU described in Section 2.3.5 above are in cash or equivalents, representing TBD% of Total Project Cost.
- 5.4 Under its standing policies and applicable law, MSUAF can only provide funding for the Capital Project that donors have gifted for this purpose. MSUAF has no alternate sources of funding available. Accordingly, MSU and MSUAF have mutually determined that funding sources identified in this MOU will equal or exceed the agreed Total Project Cost before proceeding.
- 5.5 In order to allow the Capital Project to proceed, MSUAF will provide Bridge Financing not to exceed the maximum amount set forth on *Appendix B* with such Bridge Financing to be disbursed in draws over the course of the Capital Project. At no time will the Bridge Financing outstanding balance, including accrued interest, exceed the amount of Net Pledges.
- 5.6 Funding for the Capital Project will be disbursed by MSUAF in the following order:
- 5.6.1 First, Net Gifts Collected and held by MSUAF in cash or cash equivalents;

- 5.6.2 Second, all gifts received and held directly by MSU for the benefit of this Capital Project;
- 5.6.3 Next, the full amount of non-state funds committed by MSU; and
- 5.6.4 Last, after the first three sources are exhausted, funding from the Bridge Financing.

6.0 BRIDGE FINANCING TERMS

- 6.1 Bridge Financing will be disbursed only as provided in this MOU, using a draw process. MSUAF will initiate each such draw, with notice to MSU, by preparing a written draw request that includes:
 - 6.1.1 Dollar amount of draw request;
 - 6.1.2 Total outstanding balance of the Bridge Financing for the Capital Project, including the current request;
 - 6.1.3 The actual amount expended for the Capital Project, including the current draw request, as reconciled with the agreed Maximum Facility Cost; and
 - 6.1.4 The signature of MSUAF's President and CEO, MSUAF's expenditure authority for the Capital Project.
- 6.2 MSUAF cannot provide any additional funds beyond the maximum amount of Bridge Financing as specified in Appendix B, unless this MOU is amended and approved in advance of any additional draw by the MSUAF Board of Governors.
- 6.3 Additional terms and conditions of the Bridge Financing are set forth on the attached *Appendix B*, including (i) the source of such funds as approved by the MSUAF Board of Governors, (ii) the applicable interest rate and (iii) the method of calculation of the interest.

7.0 BRIDGE FINANCING REPAYMENT

- 7.1 MSU is not responsible for re-paying any Bridge Financing advanced by MSUAF under this MOU.
- 7.2 At the Reconciliation Date, MSUAF will
 - 7.2.1 Assess the collectability of any remaining Net Pledges and, if warranted, will pursue legal action to collect said pledges or write off uncollectible pledges as per its policy.
 - 7.2.2 Determine if the outstanding Bridge Financing balance, including accrued interest, can be reasonably expected to be repaid with the remaining Net Pledges.
 - 7.2.3 If the Bridge Financing balance exceeds remaining Net Pledges, MSUAF will bring the issue to its Board of Governors to determine a schedule and source for re-payment.

8.0 AMENDMENTS

8.1 Any proposal to amend this MOU must be made in writing and by the proposing party to the other party. The proposal shall include a brief written explanation of the amendment and any applicable underlying assumptions. Any agreed amendment shall not be binding until it is signed by the authorized officers of both parties.

9.0 DISPUTE RESOLUTION PROVISION

9.1 As set forth in the November 22, 2017 Memorandum of Understanding between the parties, MSU and MSUAF agree that their relationship is of paramount importance to the ongoing and future successes of both parties and that the parties are equally committed to developing and maintain a close relationship through open communication, trust and cooperation. Accordingly, MSU and MSUAF do not anticipate any disputes in fulfilling the terms and conditions of this MOU.

9.2 Nonetheless, if any questions regarding the meaning or implementation of the provisions of this MOU arise, MSU and MSUAF shall use their best efforts to resolve any such question through good faith negotiations. After any question is brought to the attention of one party by the other party in writing, MSU's TBD and MSUAF's Vice President of Finance and Accounting shall meet in person to discuss a mutually agreeable resolution of the matter. If that effort is not successful, MSU's President and MSUAF's President and CEO shall each invite applicable members of their respective leadership teams to meet in person to endeavor to resolve the question in a timely manner.

10.0 MSU and MSUAF have caused this MOU to be executed by their duly authorized officers as of the date set forth below.

MONTANA STATE UNIVERSITY

By: _____
President Waded Cruzado

Date: _____, 2019

MONTANA STATE UNIVERSITY FOUNDATION, INC.

By: _____
Chris Murray, President & CEO

Date: _____, 2019

APPENDIX A
TOTAL PROJECT COST CALCULATION

The agreed upon Total Project Cost for this Capital Project includes:

Cost	Amount
Maximum Facility Cost ⁽¹⁾	\$ 15,520,000
Estimated Interest on Bridge Financing	765,000
Provision for Uncollectible Pledges	810,000
MSUAF Gift Fees	750,000
MSUAF Facility Fee	155,000
Total Project Cost	\$ 18,000,000

⁽¹⁾ As of the date of this MOU, \$ **TBD** has already been expended out of MSUAF fund 92748 for the benefit of this Capital Project. These costs are included in the Maximum Facility Cost.

APPENDIX B

TERMS AND CONDITIONS OF CAPITAL PROJECT BRIDGE FINANCING

1.0 MAXIMUM BRIDGE FINANCING AMOUNT

- 1.1 MSUAF will advance a maximum of \$___TBD_ in Bridge Financing to the Capital Project, provided sufficient Net Pledges exist as described in Appendix B 1.2.
- 1.2 At no time can the outstanding balance, including both principal and accrued interest, exceed this maximum.
- 1.3 At no time can the outstanding Bridge Financing balance, including both principal and accrued interest, exceed Net Pledges; this limitation may cause MSUAF to be unable to provide the full maximum amount indicated in Appendix B 1.0.

2.0 INTEREST CALCULATION

- 2.1 Because MSUAF is advancing funds out of the [TBD: Short Term Pool/Long Term Pool/external lender] and forgoing investment earnings on these funds [or TBD: paying interest and fees to an external lender], MSUAF will assess interest charges on the Bridge Financing outstanding balance.
- 2.2 Annual Rate: TBD
- 2.3 Interest computed monthly starting on the first day of the month after the date of the first draw; interest can accrue and will become part of the outstanding balance.
- 2.4 Pledge payments received during a month will reduce the outstanding balance prior to the calculation of interest for that month.
- 2.5 Computed monthly on 365/365 simple interest basis; that is by applying the ratio of the interest rate over the number of days in a year, multiplied by the average outstanding balance for the previous month, multiplied by the actual number of days the principal balance is outstanding in that month.

3.0 REPAYMENT

Net Gifts Collected received by MSUAF after the first Bridge Financing draw will be applied as payment to the outstanding Bridge Financing balance.

APPENDIX C
CAPITAL PROJECT CONSTRUCTION SCHEDULE
(Informational, not contractually committed)

[will need to request from MSU Campus Planning & Design close to the MOU execution date]