

DRAFT Memorandum of Understanding
Between
The University of Montana
And
The University of Montana Foundation

This Memorandum of Understanding (“Memorandum”) is made this _____ day of _____, 2022, between the University of Montana (“University”), and the University of Montana Foundation (“Foundation”).

RECITALS

WHEREAS, the Foundation is a non-profit corporation organized under the laws of the State of Montana to raise and provide funds in part to assist the athletic program of the University; and

WHEREAS, on _____, 2022 the Board of Regents of the University of Montana System, (“BOR”) approved a project to construct an Athletic Indoor Practice Facility on the Missoula Campus (“Project”) at a projected cost estimated not to exceed \$7,250,000 to be funded with private funds and bridge loan; and

WHEREAS, the Foundation is willing and, acting with the assistance of the University as Project Manager as detailed in this Memorandum, is able to oversee the Project by undertaking the responsibility for managing contributions and other funds available from the Foundation and other sources, contracting for the design, construction and other services, materials and works required, and thereafter conveying, transferring and contributing the Project and related improvements to the University; and

WHEREAS, the Foundation and the BOR entered into that certain Athletic Indoor Practice Facility Project Agreement and Lease (“Lease”) of even date herewith pursuant to which the Foundation shall, with the assistance of the University as Project Manager, assist the University with the Project as desired by the BOR; and

WHEREAS, the parties hereto desire to detail procedures to ensure the Project is executed smoothly and in accordance with the University’s financial plan as delivered to the Foundation pursuant to Section 3.1 of the Lease; and

WHEREAS, the Foundation requires the expert staffing and expertise provided by the University to carry out many of the responsibilities it has undertaken pursuant to the Lease, and is relying upon the University to enable the Foundation to manage all services and property provided for the Project, and to contract for design, construction and other services, materials and work required; and

NOW, THEREFORE, the parties have entered into the Memorandum for the purpose of detailing the University's obligations as Project Manager to the Foundation; detailing the procedure by which the Foundation shall pay amounts due per its obligations under the Lease; and detailing the method and timeliness of the University's reimbursement of all amounts paid by the Foundation per its obligations under the Lease.

1. TERM:

This Memorandum will be in effect throughout the entire term of the Lease. Neither party may otherwise terminate this Memorandum except upon written agreement of both parties.

2. UNIVERSITY PROJECT MANAGEMENT RESPONSIBILITIES:

The University agrees to assume the following responsibilities to assist the Foundation in overseeing the Project, namely to provide direct help to the Foundation by:

- Rendering overall management services for the Project, acting on behalf of the Foundation.
- Selecting and working with third parties to develop all plans, specifications, drawings, and construction and completion schedules for the Project.
- Scheduling, coordinating and directing all meetings, conferences and other forums with third parties relating to the Project.
- Identifying the responsibilities of all third parties relating to the Project.
- Coordinating communication, document reviews and site walk-throughs with the State Architecture and Engineering Office per MCA 18-2-103- (1) (a) and (1) (e).
- Applying for and obtaining all permits required for the Project.
- Ensuring the Project's compliance with all applicable laws, rules and regulations.
- Providing all required notices relating to the Project.
- Determining and obtaining sufficient insurance of all types necessary for the Project.
- Selecting and managing relationships with all contractors, providers, vendors, and other third parties.
- Providing to the Foundation in a timely sequence and before orders are placed for the equipment and materials, a list of materials and equipment, and any contributions, to be incorporated into the Project.
- Negotiating, developing, approving, and recommending to the Foundation for execution all contracts relating to the Project.
- Overseeing and managing all phases of Project construction.
- Developing, approving, and recommending to the Foundation for execution all change orders for the Project.
- Conducting or overseeing all inspections related to the Project.
- Maintaining adequate protection of all work on the Project, protection of all adjacent University property, and protection of the public at the Project site.

- Managing all vehicular and pedestrian traffic flow affected by the Project.
- Coordinating the disposal of all unusable material from the Project.

3. FOUNDATION PAYMENTS PER LEASE:

- The University shall negotiate, review, accept, approve and certify to the Foundation (in such form as required by the Foundation) that all payments relating to the Project, including but not limited to payments for taxes, fees, insurance, and for all labor, material and services provided by third parties in connection with the Project, are properly due and payable.
- The Foundation, upon receipt of certification from the University that such payments are due and payable, shall make all such payments as soon as is commercially reasonable from funds available to the Foundation.

4. UNIVERSITY PAYMENTS:

- Should Foundation funds not be sufficient to cover University approved payments, the University will make such payments
- The Foundation will reimburse the University for such payments when additional funding, either through pledge payments or proceeds from private loans are made available.

5. INDEMNITY:

The parties agree to indemnify and hold each other (and their respective successors, assigns, employees, officers, directors, and agents) harmless for any and all claims, actions, damages, liabilities or expenses, including all reasonable attorney's fees to the extent arising or resulting from any action, whether intentional or negligent, or any failure to act on the part of the indemnifying party of its employees or agents who are providing services to the other party under the terms of this Memorandum or Lease. The University's liability under this section is subject to the limitations and damages and immunities of the University as provided by law.

6. MUTUAL COOPERATION:

Both parties agree to work cooperatively to resolve any problems or disputes that may arise regarding this Memorandum. Either party will give prompt notice to the other party whenever party observes or becomes aware if any development that may negatively impact or affect any right or obligation of either party as set forth in the Memorandum or the Lease.

7. ENTIRE AGREEMENT; MODIFICATION:

This Memorandum, together with the Lease, constitutes the entire Agreement between the University and the Foundation and supersedes all contemporaneous oral agreements of the parties. This Memorandum shall not be modified except with written document signed by both parties. The University agrees to modify this Memorandum upon request by the Foundation to further define and clarify the obligations and procedures set forth above.

THE UNIVERSITY OF MONTANA FOUNDATION

By: _____
Cindy Williams, President and CEO Date

Attest:

Secretary, UM Foundation Date

THE UNIVERSITY OF MONTANA

By: _____
Seth Bodnar, President Date

Attest:

Paul Lasiter, UM Vice President for Finance and Operations