

**Memorandum of Understanding
Between
The University of Montana Western
And
The University of Montana Western Foundation**

This Memorandum of Understanding (“Memorandum”) is made this ____ day of ____, 2023, between the University of Montana Western (“University”), and the University of Montana Western 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, M.C.A. §20-25-309 permits the Montana University System’s (“MUS”) Board of Regents to lease 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 MUS for the purposes of constructing or renovating athletic facilities.

WHEREAS, on _____ the BOR approved a project to construct a Sports and Activities Complex (“Complex”) at a projected cost estimated not to exceed \$5,500,000 in its initial phase, to be funded with donor funds and contributions made to the Foundation (“Project”); and

WHEREAS, the Foundation is willing and able to oversee the Project by undertaking the responsibility for managing contributions and other donations from outside sources, contracting for the construction and other services, materials and works required, and thereafter conveying, transferring and contributing the Complex and related improvements to the University; and

WHEREAS, the Foundation and the University entered into that certain Sports and Activities Complex Project Agreement and Lease (“Lease”) of even date herewith pursuant to which the Foundation shall undertake management of the Project; and

WHEREAS, the parties hereto desire to detail procedures to ensure the Project is executed smoothly and in accordance with the fundraising plan as developed by the Foundation; and

NOW, THEREFORE, the parties have entered into the Memorandum for the purpose of outlining the obligations of each party in order to help ensure the Project proceeds smoothly and as planned.

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 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:

- Obtain any necessary approvals for the Project.
- Work closely with the Foundation and the Montana State Division of Architecture and Engineering (“A&E”) to oversee the Project.
- Other responsibilities as outlined in the Lease.

3. FOUNDATION RESPONSIBILITIES

- The Foundation in connection with its fundraising and management of this Project, has determined that there is sufficient donor support for the Project and has developed and implemented a fundraising strategy in cooperation with University. Accordingly, Foundation understands that state appropriation funds are not anticipated, guaranteed or implied by this Memorandum or the Lease.
- Foundation will hold and manage donor funds designated for the Capital Project and will monitor and collect outstanding pledges using its standard procedures.
- Work to ensure that the Project is completed by Fall 2024
- Keep the University abreast of progress on the Project and work with the University on any significant issues or changes that will result in delays or modification of the University’s expectations regarding the Project.
- Rendering overall management services for the Project.
- 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.
- 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.
- Negotiating, developing, approving, and recommending to the Foundation for execution on all contracts relating to the Project.

- Overseeing and managing all phases of Project construction.
- Developing, with the University's consent, all change orders for the Project.
- Ensure the Project is compliant with 2010 ADA Standards for Accessible Design
- Foundation will not exceed the projected cost estimate of \$5,500,000 for the Project, unless otherwise agreed to in advance in writing by both Foundation and the University, each in their own discretion.
- Other responsibilities as outlined in the Lease.

4. 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.

5. 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.

6. AMENDMENTS:

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 representatives.

THE UNIVERSITY OF MONTANA FOUNDATION

By: _____
Executive Director Date

Attest:

Board Chair, UM Western Foundation

THE UNIVERSITY OF MONTANA

By: _____
Chancellor Date

Attest:

UMW Vice Chancellor for Administration and Finance