



Attachment Item 109-1504 R 1100



Butte-Silver Bow Planning Board

September 8, 2000

John Hintz
Vice Chancellor for Administrative and Student Affairs
1300 West Park Street
Butte, MT 59701-5997

Re: Agreement on use of Alumni Coliseum

Dear John:

Herewith is the final "Agreement" between Butte-Silver Bow and Montana Tech that stipulates the responsibilities and obligations of both parties to make improvements and then maintain the Alumni Coliseum on the campus of Montana Tech. The Agreement has been signed by Mr. Lynch and is ready for signature by Mr. Gilmore.

As you know, the Agreement has undergone careful consideration and thorough legal review by the Butte-Silver Bow County Attorney's office and the counsel for the Board of Regents. Essentially, the Agreement confirms the long-standing relationship between Montana Tech and Butte-Silver Bow with respect to the shared use of Alumni Coliseum for community purposes. The Agreement also establishes policies and procedures to be used by both parties to select, approve and construct improvement projects from the \$200,000 trust account created in 1999 as part of the resolution of issues associated with the Clark Tailings Superfund project.

On September 6, 2000, the Butte-Silver Bow Council of Commissioners granted authority for Chief Executive Jack Lynch to sign the agreement on behalf of Butte-Silver Bow. Pending approval of the Board of Regents, please have Mr. Gilmore sign on behalf of MT Tech and return the original to me. Thank you for your attention to this matter.

Sincerely,

Jon C. Sesso

Planning Director/Superfund Coordinator

cc: Jack Lynch, Chief Executive
Robert M. McCarthy, County Attorney
Jim Johnson, Public Works Director
Mike Shea, Budget Director

AGREEMENT

This Agreement is renewed this _____ day of _____, 2000, by Montana Tech of the University of Montana, herein referred to as "MTECH", and the City-County of Butte-Silver Bow, herein referred to as "BSB".

WHEREAS, the MTECH campus is located in Butte, Montana and included on campus is Alumni Coliseum; and

WHEREAS, through a cooperative relationship between MTECH and BSB, the Alumni Coliseum has been used and maintained for community purposes, including serving as the home for Butte's American Legion baseball program for more than 25 years; and

WHEREAS, MTECH and BSB wish to extend and continue their relationship to use the Alumni Coliseum for various community and recreational purposes, including Butte's American Legion baseball program; and

WHEREAS, through a separate cooperative relationship between MTECH and the Copper Kings, Alumni Coliseum has also served as the home of the local minor league professional baseball team; and

WHEREAS, BSB has created and intends to administer a private trust account of \$200,000 with its sole purpose being to make a variety of future improvements to Alumni Coliseum and upgrade the facility for community uses; and

WHEREAS, BSB and MTECH would like to enhance their cooperative relationship in the best interests of the local community by working together on projects to improve and maintain Alumni Coliseum.

THEREFORE, this Agreement sets forth the following terms pursuant to which BSB and MTECH shall agree:

SECTION 1: BSB and MTECH agree to convene a meeting of interested parties to gather input regarding needed improvements to Alumni Coliseum, and work together to establish priorities and select improvements to construct.

SECTION 2: BSB and MTECH agree to work together to direct and manage construction projects and/or repairs to the field and various utilities. When the funds attached to this Agreement are being applied to a project, both BSB and MTECH must agree to the project in order for the project to be approved and proceed. BSB and MTECH agree to follow all applicable state and local bidding and construction procedures and requirements. The appropriate involvement of the Montana State Department of Administration will be determined and employed.

SECTION 3: BSB and MTECH agree to work with interested parties and community partners to obtain matching funds and donated services that will maximize the value of the improvements to the facility and serve the best interests of the community.

SECTION 4: BSB and MTECH agree that any improvement recommended for construction shall not proceed without prior approval by the BSB Chief Executive and the BSB Council of Commissioners. Further, in that all improvements shall become the property of MTECH, MTECH shall obtain the approval of the Montana University System Board of Regents and the State of Montana, as may be required by state statute for the expenditure of funds and for the intended purposes of this agreement

SECTION 5: BSB agrees to provide fiscal oversight for the project, and ensure all payment obligations are consistent with funds available in the trust account, and that no improvements are authorized unless payment funds are in hand.

SECTION 6: MTECH agrees to be provide access to the Alumni Coliseum to BSB for authorized community uses, including but not limited to American Legion baseball teams for practice and games during the season, with the understanding that such access does not unreasonably conflict with the mission of the college or campus activities. Any activities to be conducted in Montana Tech facilities are to be arranged and approved

through the Montana Tech Scheduling Office, which is governed by Montana Tech and Regents policy and authority.

SECTION 7: BSB and MTECH agree to maintain the Alumni Coliseum in an effective fashion and sustain their current relationship regarding respective maintenance responsibilities. In this regard, no additional expenses shall be incurred by MTECH above and beyond the current and necessary maintenance of the MTECH grounds and facilities.

SECTION 8: BSB and MTECH agree to meet on an as-needed basis during construction projects to establish schedules that are mutually acceptable, to discuss progress and to resolve problems as they may arise. Thereafter, BSB and MTECH agree to meet at least semi-annually to discuss all activities associated with this Agreement, particularly maintenance responsibilities and the schedule of play considerations.

SECTION 9: GENERAL PROVISIONS

- a. For the purposes of this Agreement, the parties appoint the following persons as their duly authorized representatives:

For MTECH:

John Shea
Physical Facilities Director
UM-Montana Tech
1300 West Park Street
Butte, MT 59701

For BSB:

Jim Johnston
Public Works Director
Butte-Silver Bow County
126 West Granite
Butte, MT 59701

- b. This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency or partnership between BSB and MTECH. Neither BSB or MTECH is authorized to act on behalf of the other in any manner relating to the subject matter of this Agreement, and neither shall be liable for the acts, errors, or omissions of the other entered into, committed or performed with respect to or in the performance of this Agreement.

- c. It is understood that MTECH shall continue to have a separate lease agreement with the Copper Kings to schedule the use of Alumni Coliseum and related facilities, and to assess fees and charges for user-related expenses. Per standard policies, MTECH cannot subsidize or financially support business entities in their use of the facilities.
- d. In light of services and support provided by BSB, MTECH will not charge a fee for Legion use of the Alumni Coliseum and related facilities; however, any direct costs for special accommodations may require reimbursement.
- e. The Legion Baseball Program and the Copper Kings (as lessee) shall be allowed to operate and retain profits from a concession enterprise, independent of the MTECH food service, for regularly scheduled games. However, financial arrangements for concession operations for special events or tournaments must be approved separately by MTECH.
- f. Except for any of its own acts or omissions, BSB and MTECH shall be held harmless from any liability for the acts or omissions of other users of the field and associated facilities, such as the Legion baseball program, the Copper Kings minor league baseball team, or other groups who may arrange to use the facilities.
- g. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.
- h. This Agreement embodies the entire agreement of BSB and MTECH with respect to the subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement. This Agreement may not be modified except by a written agreement signed by a duly authorized representative of BSB or MTECH.
- i. BSB and MTECH represent and warrant to each other that persons executing this Agreement have been duly authorized to do so on behalf of BSB and MTECH respectively, and have full

power and authority to do so on behalf of BSB and MTECH respectively, and have full power and authority to bind BSB and MTECH hereunder.

- j. It is the intent of BSB and MTECH to comply with the provisions of this Agreement, which is to be renewed annually. Implementation of any agreed-to amendments will take place each year on January 1. Both parties desire this Agreement to continue the traditional relationship, which has been long standing and mutually beneficial. For practical purposes and reasons of clarification, the minimum term would be at least ten years in consideration of the approximately \$200,000 being applied to facility and grounds improvements. But, it is the stated intent and desire of both parties that the use of Alumni Coliseum by the Butte Legion baseball program continue beyond this arbitrary timeline (which is provided only to create a reference point of assurance and intent).

The following provisions for the termination of the agreement are provided to serve as examples of the types of issues that might lead to termination if this were to become necessary, required, or advisable.

- 1) Mutual agreement of the parties for whatever reason;
- 2) Some significant and determining intervening circumstance such as the unavailability of the facility due to a cataclysmic event or dire circumstances;
- 3) The inability of either party to maintain the facility in a safe and useable condition due to budgetary, maintenance, or code requirements;
- 4) The decision of BSB or the Legion to locate their baseball playing elsewhere;
- 5) The dissolution of Butte Legion Baseball;
- 6) A compelling priority need for Montana Tech, as determined by the Board of Regents for Higher Education, to use the Alumni Coliseum grounds and facility for an alternative purpose and use, vital and integral to Montana Tech's mission as an institution of higher education.

Clearly there could be circumstances that would result in the termination of this Agreement, but they are limited in nature and scope. Timely notification of termination is expected.

DATED AND EFFECTIVE AS OF THE DATE FIRST WRITTEN ABOVE.

BUTTE-SILVER BOW GOVERNMENT:

BY:



Jack Lynch, BSB Chief Executive

Attested:



BSB Clerk & Recorder

MONTANA TECH of the University of Montana

BY:

Dr. Frank Gilmore, Chancellor