

**LONG-TERM LEASE AT FORT MISSOULA**

By and Between  
**The University of Montana**  
and  
**The City of Missoula**

**FOR CONSTRUCTION OF 300 SPACE PARKING LOT AND BUS SHELTER**

This Long-Term Lease agreement ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between The University of Montana, as Lessor, ("UM" or "Lessor") and The City of Missoula, Montana, acting by and through its Office of Parks and Recreation ("City" or "Lessee").

**WITNESSETH:**

**Whereas**, UM owns undeveloped land at Fort Missoula, immediately adjacent to the College of Technology west campus; and,

**Whereas**, UM is seeking to expand the "Park-and-Ride" commuter parking shuttle system to the College of Technology west campus; and

**Whereas**, City owns undeveloped land at Fort Missoula, immediately adjacent to the east of the UM land; and

**Whereas**, City plans to improve its land at Fort Missoula by building soccer and multi sport competition playing fields and other park amenities per the Master Site Plan for Fort Missoula Regional Park (FMRP) (Exhibit B); and,

**Whereas**, City is in need of additional space for the purpose of building a 300-space parking lot for users of the Fort Missoula Regional Park; and

**Whereas**, UM and City are willing to work together to accommodate the needs of both parties by building one parking lot, including a bus rider shelter and stop, that can be used by both parties effectively and efficiently.

**Now, therefore**, in consideration of the promises, other good and valuable considerations, and the full and faithful performance of all the items and conditions set forth herein, UM and City agree as follows:

**1. Leased Premises and Use**

- 1.1 UM hereby leases to the City land owned by UM as illustrated and described as "Parcel A" in Exhibit A (attached hereto and by this reference made a part hereof), hereinafter referred to as the "Leased Premises".
- 1.2 The City agrees to use the Leased Premises for the express purpose of constructing a parking lot, bus shelter and related structures for the purpose of providing 300 parking spaces adjacent to the City's playing fields and per the FMRP Plan as set forth herein. It is understood that the parking lot will also be made available to students attending UM's COT west campus programs and to UM for expansion of the "Park-and-Ride" shuttle

services to the College of Technology west campus. Use of the space for construction of the parking lot, sports fields, and general Park development is acceptable.

- 1.3 UM agrees to furnish to the City during the term of this Lease the right of ingress and egress to and from the Leased Premises, over and across land, common entrances and rights of way that UM owns or is a party to.
- 1.4 The City shall not suffer any waste to be committed in or about the Leased Premises, shall keep the premises free and clear of any and all refuse and other nuisance, shall strictly adhere to applicable regulations for the use and proper disposal of any chemicals, and shall observe all applicable laws, rules, regulations and ordinances relating to the maintenance, use and occupancy of the Leased Premises.
- 1.5 UM agrees that the City may post business signage of a type and in locations as approved by UM.

## **2. Term of Lease**

- 2.1 UM hereby leases to the City the Leased Premises for a primary term of fifty (50) years, beginning on June 1, 2010, subject to termination and renewal rights thereafter as hereinafter set forth.
- 2.2 This Lease may, at the option of UM, be renewed for an additional lease period as negotiated for the mutual benefit of the parties. City shall provide written notice of desire to renew to UM at least thirty (30) days before this lease would otherwise expire.

## **3. Construction**

- 3.1 All construction will be accomplished through contracts administered by the City and all costs for construction of the parking lot shall be paid by the City, including but not necessarily limited to design, project fees, construction, permits, site work and development, surveying, change orders and claims.
- 3.2 The City agrees that in the development of construction plans, the City will coordinate the review of these plans with UM and that the final construction plans must be approved by UM prior to bidding or construction. UM will not unreasonably withhold approval of construction plans.
- 3.3 All electric, gas and communications utilities serving the parking lot, unless otherwise agreed in writing, shall be served and separately metered by the local utility provider.
- 3.4 Montana University System (MUS) Board of Regents Policy requires the following steps to be completed prior to construction or alteration of MUS property :
  - 3.4.1 The Board of Regents Policy #1003.6 requires the Board to approve transfers of interest in MUS property, including leases. The City agrees to provide UM with an accurate legal description of the Leased Premises for inclusion in the Lease to be submitted to the Board of Regents for approval (per Exhibit A).
  - 3.4.2 Board of Regents policies also require an examination of environmental and heritage

property concerns on transfers of interest of University property. The City, therefore, agrees to conduct and pay for the following prior to any construction work being performed by the City:

- 3.4.2.1 Environmental Concerns: An environmental assessment (EA) shall be prepared in conformance with §17.4.609, ARM; and an environmental impact statement (EIS) (if necessary) in conformance with §75-1-201, MCA.. City agrees to pay for the cost of the EA or EIS, plus all mitigation costs. .
- 3.4.2.2 Heritage Property Concerns: The Leased Premises have previously been identified as heritage property. As such, the City agrees to abide by Board of Regents Policy #1003.5 requiring notice to the local, state and tribal Historic Preservation Offices with a detailed plan addressing the protection of any cultural materials discovered during the construction process. City agrees to comply with any additional direction provided by local, state or tribal Historic Preservation Offices necessary upon the discovery of cultural materials and to pay all costs associated with such compliance.
- 3.4.2.3 Additional Concerns: Should the Board of Regents require additional surveys or review prior to authorization of this Lease, City agrees to pay for all such surveys or reviews. Such surveys or reviews include, but are not limited to, the following: land survey, water rights survey, archeological survey and enrichment survey.

3.5 City agrees to address all public inquiries regarding the City's Lease of UM property to the best of its ability. Should the City be unable to address a public question regarding this Lease, then City agrees to refer the member of the public to the UM Office of Legal Counsel.

#### **4. Rent**

4.1 In exchange for the Leased Premises, and use of the parking spaces and bus shelter, the City shall afford UM the opportunity to use the parking lot for reasonable and compatible uses. No other rental fees are chargeable or payable during the term of the Lease.

#### **5. Operations & Maintenance**

5.1 City will be responsible for paying all operations and maintenance costs for the leased property , including but not necessarily limited to heat, lights, power, communications, custodial, refuse, and building or parking lot maintenance and repairs for any structure built upon the Leased Premises.

#### **6. Hold Harmless / Indemnification**

6.1 Each party shall be responsible for any actions or omissions to act that are solely attributable to that party and shall further indemnify, hold harmless and defend the other party for any actions or omissions for which the other party had no duty, responsibility and/ or role or pursuant to this agreement. In all other instances potentially involving joint duty, responsibilities and/or roles pursuant to this agreement, both parties shall work jointly to defend and/or resolve any

claims or litigation.

**7. Subletting and Assigning**

7.1 The City shall not sublet or assign the Leased Premises or change occupant of the Leased Premises, in whole or in part, without the written consent of UM. Any such change in occupant or substantive use shall only be for other similar uses that are consistent and compatible with UM's mission. UM consent will not be unreasonably withheld.

**8. Improvements and Modifications**

8.1 Any improvements or modifications made to the Leased Premises after the completion of initial construction, shall be negotiated with and approved by UM, and executed at the City's expense.

8.2 City shall not fasten or attach any appurtenances (hangers, seasonal lights, antennas, dishes, measurement instruments, etc.) to the Leased Premises without approval of UM.

**9. Insurance and Liability**

9.1 Both UM and the City shall be responsible for insurance coverage for their respective use of the parking lot, including property damage and personal injury liability.

**10. Termination Rights**

10.1 It is understood by both parties that the City intends to commit funds in order to proceed diligently with design and construction of the FMRP Master Plan, including the parking lot and bus rider shelter upon execution of this Lease and as funding allows. However, in the case that sufficient funding is not available, or other reasons beyond the control of the City prevent the timely commencement of construction within seventy-two (72) months from the date of execution of this Lease, the parties will, unless otherwise agreed in writing, re-negotiate this Lease or terminate the Lease entirely.

**11. Damage or Destruction**

11.1 If at any time during the term of this Lease the structures and facilities erected upon the Leased Premises shall be substantially damaged or destroyed by fire or made wholly or partially unfit for use by other casualty, or the structure or facilities are declared unsafe or unfit for occupancy by an authorized public authority, UM shall have the option to:

- a. Allow the City to commence and thereafter proceed with reasonable diligence, at the City's sole expense, to restore or rebuild the same as nearly as possible to its value immediately prior to such damage or destruction; or,
- b. Terminate this Lease in accordance with disposal provisions contained herein.

**12. Disposal**

- 12.1 Any and all improvements, buildings, structures, and facilities constructed under or included in this Lease shall be and remain the property of the City and within one (1) year after termination or expiration of this Lease, UM shall have the option of effecting disposal of such facilities and improvements as follows:
- a. In accordance with applicable laws and regulations in effect at the time of the disposal, the City shall provide UM with the right of first refusal to acquire the improvements. The conveyance of the facilities and improvements to UM would be made without further compensation for the depreciated improvements; or,
  - b. At the City's sole expense and in accordance with applicable laws and regulations in effect at the time of the disposal, dispose of such facilities and improvements by dismantling or demolishing them and removing them from the Leased Premises, including completely removing all hazardous and nonhazardous waste materials; and restoring the areas affected by such removal to return them to the same condition as before the City leased the property.

**13. Lessor's Right of Inspection**

- 13.1 UM and its agents shall have the right to enter the Leased Premises during the City's business hours for the purpose of examining or inspecting the condition of the Leased Premises and/or to verify compliance with any provision of this Lease. Violations of this provision may include civil remedies.

**14. Default**

- 14.1 Any omission of UM to exercise any right upon the default of the City shall not preclude UM from exercise of such right upon any subsequent default of the City.
- 14.2 Abandonment for more than 90 calendar days or surrender of the Leased Premises or failure by the City to perform as required any condition or provision of this Lease shall constitute default (default includes breach). In the case of default, UM shall notify the City of the default, detailing the event of the alleged default and the required method and time frame for remedy.
- 14.3 If any default by the City shall continue uncured, following notice of default as required under the applicable provision of this Lease, UM may terminate this Lease by giving City notice of termination upon which the City's rights in the Leased Premises shall terminate.

**15. Waiver**

- 15.1 No waiver by any party of any provision of this Lease shall be deemed to be a continuing waiver of that provision, or any other provision hereof, or of any subsequent breach by the other party of the same or any other provision, or a consent or approval for any subsequent act, whether or not similar to the prior act consented to or approved.

**16. Severability**

- 16.1 Should any provision or portion of such provision of this Lease be held invalid, the remainder of this Lease and/or the remainder of such provision shall not be affected thereby.

**17. Time of Essence**

17.1 Time is of the essence with respect to payment to the performance of every provision of this Lease.

**18. Venue**

18.1 This Agreement shall be construed in accordance with the laws of the State of Montana, and in the event of litigation between the parties hereto concerning the terms and conditions of this Agreement, it is agreed that venue shall be the 4<sup>th</sup> Judicial District of the State of Montana, in and for Missoula County.

**19. Successors and Assigns**

19.1 The covenants, terms and provisions of this Lease and the conditions herein shall inure to the benefit of the parties hereto and bind UM and the City and their respective heirs, administrators, successors and assigns.

**20. Notification**

20.1 All notices or official communications which may be required under this Lease, given by either party to the other, shall be made in writing and addressed to such party's address, unless otherwise provided herein, as follows:

a. Notice to UM: Mr. Hugh Jesse  
Director of Facility Services  
The University of Montana  
32 Campus Drive  
Missoula, MT 59812

b. Notice to City: City of Missoula  
John Engen, Mayor  
435 Ryman Street  
Missoula, MT 59802

Donna Gaukler  
Missoula Parks & Recreation  
1280 S. 3<sup>rd</sup> West  
Missoula, MT 59801

c. Changes: Either party may, from time to time by written notice to the other, change the address or person to which notices shall be sent.

**21. Representation**

21.1 The making, execution, and delivery of this Lease have been induced by no representations, statements, or warranties other than those herein expressed. This Lease embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Lease may be amended or modified only by an instrument of equal dignity and formally signed by both of the respective parties hereto.

**IN WITNESS WHEREOF**, both UM and the City have hereunto executed, signed, sealed and delivered this Lease, the day, month and year first written above.

**The University of Montana (UM)**

\_\_\_\_\_  
Robert A. Duringer, VP of Administration & Finance      Date

**The City of Missoula**

\_\_\_\_\_  
John Engen, Mayor      Date

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