

DRAFT - LEASE**MSU NORTHERN ATHLETIC FACILITIES PHASE I IMPROVEMENT PROJECT**

This LEASE is entered into by Montana State University (MSU), Montana State University-Northern (MSU-Northern or MSUN) and the Montana State University-Northern Foundation (Foundation).

RECITALS

WHEREAS, the FOUNDATION is a private, non-profit corporation organized under the laws of the State of Montana to support and enhance the programs of MSU-Northern; and, the FOUNDATION is a "non-profit foundation" satisfying the intent of MCA §20-25-309; and

WHEREAS, it is the desire of MSUN, MSU and the FOUNDATION to enter into an agreement under which the FOUNDATION will lease certain premises to execute Athletic Facilities Improvement Projects (Projects) for the benefit of MSUN; and

WHEREAS, the FOUNDATION is willing to lease a prescribed set of athletic facilities ("Premises") and necessary adjacent property and be responsible for all work necessary to construct Phase I improvements to those facilities, in accordance with the direction provided by MSU-Northern and MSU, and transfer the related improvements to MSU-Northern upon completion; and

WHEREAS, MSU, MSU-Northern and the FOUNDATION have executed a Memorandum of Understanding, documenting the parameters under which Phase I of the Project will be designed and constructed; and

WHEREAS, the Board of Regents of the Montana University System has authorized the leasing these facilities in accordance with MCA §20-25-309; and

THEREFORE, the parties agree as follows:

SECTION 1: FOUNDATION'S Responsibilities

1. As lessee, the FOUNDATION will be responsible for all work including the coordination and direction of planning, design and construction of all elements of Phase I of the Project.
2. The FOUNDATION will enter into all contracts required for the design and construction of Phase I of the Project.
3. The FOUNDATION will lease those portions of the premises that are necessary to complete the Project, as described in Attachment A to this LEASE, commencing on the date of this LEASE and continuing until the conveyance, transfer and contribution of the improvements by the FOUNDATION to MSU-Northern at the completion of all work.
4. The FOUNDATION shall not assign or sublease the premises to any other party, nor shall the FOUNDATION use or permit the demised premises to be used for any purpose other than the purposes stated herein.

5. The FOUNDATION shall permit MSU-Northern and its authorized agents and employees to enter upon the demised premises at any and all times to inspect the premises and for any other purpose incidental to MSU-Northern's business such as routine maintenance.
6. During the term of this LEASE, the FOUNDATION shall permit MSU-Northern to use the demised premises as needed for public events and other reasonable university purposes, at no charge to MSU-Northern.
7. The FOUNDATION agrees to satisfy all requirements of MCA §20-25-309 and to negotiate all contracts in the best interests of MSUN and MSU and to include statements, in all contracts issued, specifically stating that no commitment of state appropriations for design, construction, operations or maintenance is either expressed or implied.
8. The FOUNDATION shall make reasonable efforts to minimize disruption of campus utility services and shall coordinate with MSUN representatives prior to the time that any connections are made. If it is necessary to disrupt a utility service, such disruptions shall be at times designated by MSUN to minimize the effects of such disruptions.

SECTION 2: MSU-Northern's Responsibilities

1. MSUN and MSU will have full rights to inspect the Project site during construction for compliance with approved construction documents and the requirements of this MOU.
2. MSUN will provide all water, gas, heat, light, power, telephone service, and other public utilities to be furnished to the Premises, and all other costs and expenses in connection with the use, operation and maintenance of the non-leased facilities on or adjacent to the Project site. The Contractor will make the necessary connections.

SECTION 3: Right to Terminate

1. If the FOUNDATION should persistently or repeatedly refuse or should fail to supply enough contractors or subcontractors or material or labor (except in cases for which extension of time is provided), or persistently disregard laws, ordinances, MSUN Policies or otherwise be guilty of a substantial violation of any provision of this MOU, MSUN and MSU may, without prejudice to any other right or remedy, and after giving the FOUNDATION and its surety, if any, seven (7) days written notice to cure the violation, terminate this MOU, and take possession of the Premises and of all materials, tools and appliances thereon, and finish the work by whatever method they may deem expedient.
2. This LEASE shall terminate upon completion of Phase I of the Project and fulfillment of all requirements set forth herein.

SECTION 4: Amendments

1. This LEASE may be amended by mutual agreement in writing, executed by the officials executing this LEASE, or their successors, and appended hereto.

SECTION 5: Notices

All notices given by one party to the other parties hereunder shall be mailed or personally delivered as follows:

To MSU-Northern:

Chancellor’s Office
Cowan Hall
MSU-Northern

To MSU:

Vice President for Administration & Finance
Montana State University
Bozeman, MT 59717

To the FOUNDATION:

Executive Director
MSU-Northern Foundation
P.O. Box 1691
Havre, MT 59501

SECTION 6: Indemnification

1. The Parties agree to fully indemnify, defend and hold harmless each other and each other’s employees, officers, directors and agents from and against any claims, demands, damages, injuries, costs, expenses, losses, liabilities, causes of action, to the extent any such claims, demands, causes of action, etc., arise from the indemnifying party’s own negligent or other tortious acts or omissions, which arise out of the Project covered by the terms of this LEASE.

SECTION 7: MCA Requirements

This MOU is subject to the requirements of MCA §20-25-309, including but not limited to the following conditions:

1. All parties guarantee that no commitment of state appropriations for design, construction, operations or maintenance is expressed or implied.
2. The provisions of MCA §18-2-4 (Standard Prevailing Wage Rates) shall apply to all labor, other than donated labor, on this project.
3. The Department of Administration (A&E Division) shall execute the following provisions of MCA §18-2-103:
 - (1)(a) - review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers; and
 - (1)(e) - accept the building when completed according to accepted plans and specifications.

MSU-Northern FOUNDATION

Executive Director Jim Bennett

Date

MSU-Northern

Chancellor Greg Kegel

Date

Montana State University

President Waded Cruzado

Date