

AE# 2013-03-02

LIFE SCIENCE RENOVATION & EXPANSION

MONTANA STATE UNIVERSITY-BILLINGS, BILLINGS

**AMENDED FINANCIAL AGREEMENT
&
MEMORANDUM OF UNDERSTANDING**

THIS AMENDED AGREEMENT made and entered into this _____ day of _____ 2018, by and between the Department of Administration (Department), Montana State University-Billings (MSU-Billings), and Montana State University-Bozeman (MSU) for the management and financing for the project, Life Science Renovation and Expansion (a.k.a. Yellowstone Hall), replaces in its entirety the Financial Agreement & Memorandum of Understanding between the parties entered into on the 19th of March 2014.

RECITALS

The Department is authorized by law [MCA 18-2-Part 1] to manage, supervise, and control the construction of all state buildings and facilities approved by the Montana Legislative Assembly and to charge for such supervision against the project.

The Board of Regents of the Montana University System is empowered by Article X, Section 9, constitution of Montana to generally manage and control the Montana University System, and is specifically authorized by law [sections 20-25-301 et seq. MCA] to pledge the payment of revenues received from student fees, activities, rents, exhibitions, performances, including gifts, bequests, contributions and grants, both private and federal, for the acquisition and construction of facilities at university campuses.

House Bill 5 of the 63rd Montana Legislature appropriated \$10,000,000 of Long Range Building Program funds to the Department and authorized it to expend \$5,000,000 of Authority-Only matching funds to plan and construct the Science and Instructional Tech Building Addition, MSU-Billings.

The Department contracted with Dowling Studio Architects in August 2013 to prepare Programming, Schematic Design, and fund-raising documents. The design was commenced using 100% LRBP funds and then placed on hold in accordance with the original financial agreement and MOU until such time as the fundraising effort is completed by MSU-Billings.

MSU-Billings has indicated it has completed the \$5,000,000 matching fund requirement and is in the process of submitting its financing plan for approval to MSU and the Commissioner of Higher Education (OCHE).

As of March 2017, the Department's total estimated project cost had risen to approximately \$18.5 million and the parties agreed by December 2017, to cost-reduction items for a total estimated project cost of \$17.1M.

In November 2017, a special session of the 65th Legislature transferred \$5,000,000 from the Long-Range Building Program (LRBP) fund account to the General Fund without altering or reducing the authorized number or appropriation levels of prior approved projects. This transfer unbalanced the LRBP account which impacts the Department's scheduling and timing of projects until future revenues flows accrue into the LRBP account.

THEREFORE, based on the above recitals and the terms and conditions stated in this agreement, the parties agree as follows:

1. MSU-Billings will pursue Board of Regents' approval for at least \$2.1M in student fees to cover the additional funding needed to reach the \$17.1M level. Additional state-level spending authority is also needed for the \$2.1M and the Department, at its discretion, may request an LRBP budget amendment be approved by the Budget Director per 17-7-211 MCA or submit the request to the 66th Legislature as part of the LRBP process in 17-7-203 MCA.

2. Costs exceeding \$17.1M shall be the sole responsibility of MSU-Billings. The Department will work with MSU-Billings to obtain any necessary additional executive or legislative LRBP budget amendments for spending authority, but any and all additional cash requirements are wholly the responsibility of MSU-Billings to raise, levy, or otherwise obtain.
3. The Department will recommence the design process when:
 - a. MSU and OCHE have approved MSU-Billings' financing plan;
 - b. BOR has approved the additional \$2.1M in funding; and,
 - c. This Amended Financial Agreement & Memorandum of Understanding has been fully executed by the parties.
4. The Department and MSU-Billings agree that costs through schematic design have been paid using 100% LRBP funds (\$352,578). As a result of impacts to the LRBP fund by the transfer in November 2017, MSU-Billings agrees to fund 100% of the remaining design effort through the completion of Construction Documents (December 2017 estimate of an additional +/- \$850,000).
5. The Department will not release the completed design for bids until it has determined at its sole discretion that sufficient LRBP funds have accrued in the LRBP account. When the Department has determined the project can proceed to bid and award a construction contract, the Department shall utilize 100% LRBP funds until an expenditure balance of 58.48% (\$10.0M/\$17.1M) LRBP funds and 41.52% (\$7.1M/\$17.1M) non-state funds is achieved. From that point, funds will be expended on the same percentage basis.
6. As required in HB 5 of the 63rd Legislative session, MSU-Billings concurs that the project parameters must remain substantially intact to what was presented to the Legislature and in general alignment with the Programming Document dated February 2014.
7. The Department and MSU-Billings agree that the project budget and scope are somewhat fluid during design and a construction contingency will be reserved and managed by the Department, which may, at its sole discretion after consultation with MSU-Billings, alter the budget or scope, and administer the project funds as it deems necessary and appropriate to stay within the funding authorized.
8. The Department shall provide final plans and specifications, bid, and award the necessary contracts for the project pursuant to the public bidding laws of the State of Montana and to take all other necessary action with regard to the construction of the project pursuant to applicable law.
9. The Department and MSU-Billings agree that the project must be designed, constructed and operated as a high-performance building per 17-7-213 MCA and that the project is required to achieve a LEED silver or Green Globes 2 globes rating and that this priority needs to be supported by all involved in the project from design through final acceptance and submission for certification.
10. MSU-Billings understands the Department may assess a 3% supervisory fee on all non-state funds in the project pursuant to 18-2-105 MCA. The supervisory fee must be paid from project funds.
11. MSU-Billings agrees to promptly provide the Department with written notice of financial, reporting, or other requirements attached to any funds allocated to the project by donors or financing entities. The Department agrees to provide summaries of project expenditures and invoices upon request. The Division will provide the MSU-Billings with monthly MTGL-0106 reports and a final project completion report. It is MSU-Billings' responsibility to use these reports for reporting the capital project on MSU-Billings' asset management system.
12. Per the Montana Operations Manual 302(XV) policy, the Department will make project expenditures from MSU-Billings' capital project plant fund 71300. MSU-Billings shall ensure that all financed proceeds and transfers of the required funds to the appropriate capital project plant fund will occur as requested and in a timely manner. If cash flow from the non-state proceeds or other authority-only sources to the identified project plant fund is delayed or fails for any reason, MSU-Billings will be responsible for obtaining interim funding as necessary to meet its obligations. Any funds remaining after completion of the project will be returned to the original funding entity and the associated spending authority reverted.

- 13. Each agency agrees to give written notice to the other of any rules or requirements that may affect this Agreement. In the event any provision of this Agreement shall be determined to be illegal or invalid, the Agreement shall be construed and enforced as if said illegality or invalid provision had never been inserted. No party to this Agreement will be required to perform or render any services hereunder, the performance or rendition of which would violate any laws, rules or regulations.

- 14. In the event of a dispute between the parties, disputes will be resolved at the lowest level; if a disagreement cannot be resolved by the project team, the matter will be referred to the Administrator of the Architecture & Engineering Division and the MSU Associate VP of Administration & Finance for resolution. If they cannot resolve the matter, the Director of the Department of Administration and the MSU VP for Administration & Finance (or MSU President) will attempt to resolve the dispute; any unresolved issues will be referred to the Governor's office for a final, binding decision.

- 15. This Agreement constitutes the sole and entire agreement between the parties and it is understood that no other representations or obligations not specifically contained herein shall be binding or enforceable. This Agreement may be amended only in writing and signed by both parties.

Montana State University-Billings

Department of Administration

Dan Edelman, Chancellor

Russ Katherman, Administrator
Architecture & Engineering Division

Date

Date

Montana State University-Bozeman

Terry Leist, VP Administration & Finance

Date