

## **MSU NORTHERN ATHLETIC FACILITIES Phase I IMPROVEMENT PROJECT AGREEMENT AND LEASE**

This AGREEMENT AND LEASE is entered into by the Lessors, Montana State University (MSU), Montana State University-Northern (MSU-Northern or MSUN) and the Lessee, 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 this agreement and lease, 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 of these facilities in accordance with MCA §20-25-309; and

THEREFORE, the parties agree as follows:

### **SECTION 1: FOUNDATION'S Responsibilities**

1. The FOUNDATION shall establish, chair and support an Athletics Project Improvements Committee to oversee development of the Project concept, estimates and renderings; to assure that the Project is aligned with available resources, current and future needs of the university and the Athletics Department, and all scope, schedule, budget and statutory requirements, including review and approval of all contracts. This committee will continue to fulfill its oversight role if the project proceeds to construction.
2. The Athletic Project Improvements Committee shall be comprised of at the least the following:
  - a. CEO/Executive Director, MSUN Foundation
  - b. Board Member, MSUN Foundation
  - c. Vice Chancellor Administration and Finance, MSUN
  - d. Athletics Director, MSUN
  - e. Facilities Services Director, MSUN
  - f. VP Administration & Finance, MSU
  - g. AVP University Services, MSU
  - h. Director of Campus Planning, Design, and Construction, MSU
  - i. Administrator, State of Montana, A& E Division

3. 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.
4. All contractual financial obligations to those performing work on the Project shall be borne by the FOUNDATION, and except as specifically set forth in this MOU, the State of Montana, the Board of Regents, the Montana University System, MSU and MSUN shall have no obligation, financial or otherwise, to those architects, engineers, contract managers, contractors, workmen, suppliers or any person or firm involved with the FOUNDATION's efforts relative to the Project.
5. The FOUNDATION will lease the premises from MSUN that are necessary to complete the improvement Project and will manage the execution of the work and at the end of the project will convey, transfer and contribute the improvements to MSUN, free of all encumbrances, subject to the contingencies in Section 7.
6. The FOUNDATION has primary responsibility for soliciting, securing, accepting and managing all funds and contributions designated to the Project.
7. The FOUNDATION shall maintain sufficient accounts and records to enable MSUN and MSU to ascertain that funds were in fact expended properly and the FOUNDATION shall provide an audited project financial statement upon project completion if requested by MSUN or MSU. The FOUNDATION agrees to abide by the audit access provisions in Section 18-1-118, MCA
8. The FOUNDATION shall continuously maintain or cause to be maintained adequate insurance protection of all the work on the Project and shall protect the UNIVERSITY's property (including adjacent property) from injury or loss arising in connection with the Project. The entire work of the Project shall be at the sole risk of the FOUNDATION until Project completion. The FOUNDATION shall secure fire, extended coverage and vandalism insurance or all risk insurance to cover the work during the course of the project naming MSUN as an additional insured.  
  
The FOUNDATION shall obtain and cause its contractors and subcontractors to obtain workers' compensation, employer's liability, bodily injury liability, property damage liability and comprehensive automobile bodily injury, and property damage liability insurance in amounts satisfactory to MSUN and the State Of Montana requirements naming MSUN as an additional insured.
9. The FOUNDATION will enter into all contracts required for the design and construction of Phase I of the Project.
10. 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, subject to the contingencies in Section 7.
11. 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.
12. 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.

13. During the term of this LEASE, it shall be mutually agreed upon by both the FOUNDATION and MSUN to use the demised premises as needed for public events, promotional activities, and other reasonable university purposes, at no charge to MSU-Northern.
14. 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.
15. 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 AGREEMENT.
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 refuse or should persistently or repeatedly fail to supply enough contractors or subcontractors or material or labor (except in cases for which extension of time is provided), or disregard laws, ordinances, MSUN Policies or otherwise be guilty of a 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, subject to the contingencies in Section 7.

#### **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: Liability**

1. Each party hereto agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees to the full extent required by law. The parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Montana; (2) the consent of the State of Montana or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Montana beyond the waiver provided in Title 2, Ch. 9, Montana Codes Annotated..
2. After the termination of this LEASE, and the conveyance of the improvements on the Premises, the FOUNDATION shall have no responsibility for the upkeep or maintenance of such improvements.

**SECTION 7: Contingencies**

1. This LEASE is contingent on the FOUNDATION securing the appropriate funding to complete the Projects, and the Premises being suitable for construction of the Project.
2. This LEASE is contingent on the FOUNDATION's Operating Agreement, dated October 11, 2016, being renewed pursuant to Paragraph 7.5 of the Agreement during the full term of this LEASE.

**SECTION 8: 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**

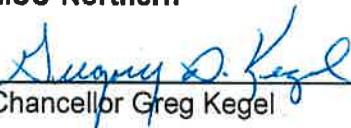


Executive Director Jim Bennett

6/5/2018

Date

**MSU-Northern**

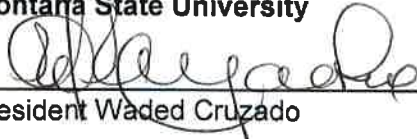


Chancellor Greg Kegel

6.6.2018

Date

**Montana State University**



President Waded Cruzado

June 11, 2018

Date