

TURF PROJECT AGREEMENT AND LEASE

This AGREEMENT AND LEASE (AGREEMENT) is entered into between Montana Tech of The University of Montana (TECH), a campus of the Montana University System, located in Butte, Montana 59701 and the Montana Tech Foundation (FOUNDATION), a non-profit corporation organized and existing under the laws of the State of Montana, located in Butte, Montana 59701.

RECITALS

WHEREAS, the FOUNDATION is a non-profit corporation organized under the laws of the State of Montana to support and enhance the programs of TECH; and

WHEREAS, The FOUNDATION is willing to lease the Alumni Coliseum to construct an artificial playing surface for the football field, including but not limited to the playing surface itself, related drainage and conduit for audio, video, and power, the movement of the irrigation system, removal of soil, and the addition and/or relocation of fencing. The Foundation shall manage contributions to and/or private funds for the Turf Project; contract for the construction and other services, materials and work required; and transfer the related improvements to TECH upon completion.

WHEREAS, Montana Code Annotated (MCA) 20-25-309, authorized the Board of Regents (BOR) to lease land to the FOUNDATION for construction or renovation of athletic facilities under certain conditions, with the express purpose of excluding the project from Montana public facilities construction bid requirements in order to take advantage of significant private contributions; and

WHEREAS, the BOR has authorized this Lease and the Project by Item No. 158-1503-0313, at the March 7-8, 2013 meeting;

NOW THEREFORE, the Parties agree as follows:

SECTION I

General Responsibilities

1.1 Purpose. The BOR desires to authorize the FOUNDATION to accept contributions and manage funds for the Turf Project. The Foundation shall manage contributions to and/or private funds for the Turf Project; contract for the construction and other services, materials and work required; and transfer the related improvements to TECH upon completion.

1.2 Foundation Responsibilities.

1.2.1 The FOUNDATION will have responsibility for all work, including the coordination and direction of the planning, design and construction of the Turf Project.

1.2.2 The FOUNDATION will enter into all contracts required for the design and construction of the Turf Project.

1.2.3 All contractual financial obligations to those performing work in the project shall be borne by the FOUNDATION, and except as specifically set forth in this AGREEMENT, the State of Montana, BOR, the Montana University System and TECH 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 Turf Project.

1.2.4 The FOUNDATION will function as the lessee of the Stadium commencing on May 1, 2013 and continuing until the earlier of either completion of the project or September 30, 2013.

1.2.5 Throughout the term of this lease, TECH reserves the right to enter upon and utilize the leased premises, and to grant said right to other parties, for athletic contests and events, including practice sessions, and other activities reasonably related thereto, and for maintenance of the leased premises and

the improvements thereon. Such use by TECH shall be concurrent with the occupation and use of the leased premises by FOUNDATION, but FOUNDATION shall exercise its best efforts to accommodate such use by TECH and to avoid undue interference therewith.

1.2.6 Upon completion of the project, the FOUNDATION shall convey, transfer and contribute the Alumni Coliseum and all improvements thereto to TECH free of any encumbrances.

SECTION II

Lease

2.1 Lease.

2.1.1 The BOR leases to the FOUNDATION, subject to the suspension provisions set forth in Section 1.2.4 above, for the purpose of completing the necessary planning, design and construction of the Turf Project in accordance with the plans and specifications approved by TECH. The FOUNDATION shall occupy and use the leased premises for the purposes herein contemplated and for other uses reasonably and necessarily incidental thereto.

2.1.2 The FOUNDATION shall observe and comply with all laws, statutes, ordinances, rules, orders, regulations and requirements of all duly constituted governmental authorities, regulating or relating to the use of the leased premises by the FOUNDATION. The FOUNDATION shall not use or permit the use of the leased premises in any manner that will tend to create or maintain a nuisance.

2.1.3 This AGREEMENT shall continue until the earlier of project completion or September 30, 2013.

2.1.4 The FOUNDATION shall permit TECH and its authorized agents and employees to enter upon and utilize the leased premises, and to grant said right to other parties, for athletic contests and events, including practice sessions, and other activities reasonably related thereto, and for maintenance of the

leased premises and the improvements thereon. Such use by TECH shall be concurrent with the occupation and use of the leased premises by the FOUNDATION, but the FOUNDATION shall exercise its best efforts to accommodate such use by TECH and to avoid undue interference therewith.

2.1.5 The FOUNDATION shall maintain emergency access to the site.

2.2 Covenant Not to Sue - Assignment of Rights to TECH.

TECH hereby covenant not to initiate any legal action or legal proceeding against the FOUNDATION, its officers, directors, agents and employees, because of faulty materials, equipment, installation or workmanship relating to the Turf Project. The FOUNDATION shall assign to TECH all rights and claims it may have against all contractors, suppliers or any persons or firms involved with the project. TECH shall have the right to initiate any required legal action directly against construction contractors, suppliers or any person or firm by virtue of the assignment of such rights to TECH by the FOUNDATION. The assignment of rights shall be accomplished by the FOUNDATION in writing at the time of the acceptance of the completed project by TECH. The FOUNDATION hereby covenants not to initiate any legal action or legal proceeding against TECH, its officer, directors, agents and employees, arising out of TECH's actions in relation to this AGREEMENT.

SECTION III

Funding

3.1 Funding and Financial Plan.

The FOUNDATION has the primary responsibility for accepting and managing the Turf Project funds. TECH has agreed to cooperate fully with these FOUNDATION efforts. It is estimated that the Turf Project cost will be approximately \$1,000,000.

3.2 No State Appropriated Funds Guarantees.

This lease shall be governed in all respects by Section 20-25-309 of the Montana Code Annotated; and as set forth in said Section, nothing in this lease shall constitute either an expressed or implied guarantee or commitment of state appropriated funds to finance any part of the design, construction, operation or maintenance related to the project subject to this lease during its term.

SECTION IV**Pre-Construction Phase and Scheduling****4.1 Plans and Specifications.**

The FOUNDATION shall employ architects to develop plans, specifications and drawings for the project. The FOUNDATION will submit copies of the plans, specifications and all other construction contract documents to TECH for review and approval, and shall make those corrections required by TECH. No construction shall commence without final approval of all plans, specifications and drawings by TECH. Copies of the final plans, specifications and drawings shall be filed with TECH prior to the commencement of any construction.

4.2 Construction and Completion Schedules.

The FOUNDATION will submit to TECH an overall completion schedule for the project. It is acknowledged that the goal for completion of the Turf Project is no later than September 30, 2013. The FOUNDATION will attempt to meet this goal, but failure to do so shall not cause the FOUNDATION to incur any penalty or to be in default of this AGREEMENT.

4.3 Pre-construction Conference.

After TECH has accepted the financial plan submitted by the FOUNDATION and the project completion schedule, but prior to the start of construction, TECH and the FOUNDATION shall arrange a pre-construction conference to include representatives of design and coordination firms or individuals designated in the previous paragraph and representative(s) of the principal construction firm(s) to be involved in the design, coordination and construction phases of the Turf Project. The FOUNDATION, through the FOUNDATION's Architect, will outline the responsibilities of these various entities during the progress of the project for TECH's approval.

4.4 Equipment Samples, Materials Lists.

The FOUNDATION shall submit to TECH, in a timely sequence and before orders are placed for equipment and materials, a list of items of materials and equipment, and any contributions, including the name of the manufacturer, to be incorporated into the project for review and approval by TECH.

Materials and equipment to be furnished and installed shall be manufactured, fabricated or constructed to meet all federal, state and local safety requirements and all applicable building codes of the State of Montana.

SECTION V

Construction Phase

5.1 Permits and Compliance with Applicable Laws and Campus Regulations.

The FOUNDATION shall be responsible for the securing of and payment for all required permits and inspections; the giving of all required notices; and payment of all applicable taxes and fees. The FOUNDATION further agrees that the FOUNDATION and all employees, contractors, subcontractors, materialmen, suppliers and their employees shall comply with all applicable laws, ordinances, lawful orders

and rules, regulations of public authorities having proper jurisdiction, including those rules and regulations duly promulgated by TECH; all federal and Montana anti-discrimination laws; and all federal, state and local occupational safety and health standards bearing on the Turf Project and related improvements on the premises.

The FOUNDATION's obligations shall be satisfied by requiring compliance with each of the foregoing in its contract with each party performing services or providing materials in the Turf Project and construction. As provided in MCA Sections 20-25-442 and 20-25-309(2), the Turf Project is not subject to the requirements of MCA Title 18, Chapter 2 except that:

- a. the Department of Administration shall execute the provisions of MCA Sections 18-2-103(1)(a) and (1)(e);
- b. the provisions of Title 18, Chapter 2, Part 4 apply to all labor except donated labor; and
- c. such other provisions of law as may be required to protect the interests of the State of Montana shall also be applicable.

5.2 Protection of Work and Property and Builders Risk Insurance.

The FOUNDATION shall continuously maintain or cause to be maintained adequate protection of all work on the Turf Project and shall protect TECH's property (including adjacent property) from injury or loss arising in connection with the project. Subject to the indemnification provisions in this AGREEMENT, the entire work of the Turf Project shall be at the sole risk of the FOUNDATION until project completion. Any loss or damage covered by insurance shall be promptly repaired, replaced or rebuilt by the FOUNDATION at its sole cost using insurance proceeds. 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 TECH as an additional insured.

The FOUNDATION shall require its Architect and contractors to comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The FOUNDATION shall further require its Architect and contractors to erect and properly maintain at all times, all necessary safeguards as required by the conditions and progress of the work.

The work shall be done in such a manner as will cause a minimum of interruption to surrounding persons, structures or users. All arrangements to care for such interruptions shall be the FOUNDATION's responsibility, TECH's assistance. All work shall be carried on with due regard for the safety of the public generally. Open trenches shall be provided with barricades of a type that can be seen at a reasonable distance, and at night and which otherwise comply with applicable safety standards, regulations and ordinances.

In an emergency affecting the safety of life, of the work, or of adjoining property, the FOUNDATION, without special instruction or authorization from TECH, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and it shall so act without approval.

5.3 Liability Insurance and Indemnification.

The FOUNDATION shall obtain or 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 TECH naming TECH as an additional insured.

5.4 Inspection.

TECH will have full rights to inspect the Turf Project site during the project for compliance with approved construction documents and the requirements of this AGREEMENT.

5.5 Utilities During Construction.

TECH will provide all water, gas, heat, light, power, 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 Alumni Coliseum.

The FOUNDATION shall make reasonable efforts to minimize disruption of the utility services of TECH and shall coordinate with TECH representatives prior to the time that any connections are made, or if it is necessary to disrupt a utility service, such disruptions shall be at times designated by TECH to minimize the effect of any such disruptions on the remainder of the campus. The FOUNDATION shall allow the UNIVERSITY maintenance access to utility service lines as required.

5.6 Project Completion.

TECH shall inspect and accept the Turf Project at the earlier of (i) when completed according to approved construction documents, or (ii) midnight on September 30, 2013. Prior to final acceptance of the Turf Project by TECH, the FOUNDATION shall deliver to TECH a set of reproducible mylar record prints and electronic drawing files in the AutoCad format of drawings showing significant changes made during the construction process, based on marked up prints, drawings and other data furnished by the Contractor to the FOUNDATION. The FOUNDATION shall also deliver complete, bound sets of any operating manuals or instructions for any equipment installed as a part of the project where such manuals and instructions are required or normally provided, upon completion of the project and prior to the termination of this AGREEMENT.

It is further agreed that the FOUNDATION will not be required to provide any independent warranty for materials, equipment, installation, workmanship or other services undertaken as a part of the construction of the Turf Project.

Miscellaneous

6.1 Owner's Right to Terminate AGREEMENT.

If the FOUNDATION should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough contractors or subcontractors or material or labor, or persistently disregard laws, ordinances of TECH or otherwise be guilty of a substantial violation of any provision of this AGREEMENT, TECH 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 AGREEMENT, and take possession of the premises and of all materials, tools and appliances thereon, and finish the work by whatever method TECH may deem expedient.

In the event of termination, the FOUNDATION shall transfer any remaining funds, fund pledges, pledges for materials, services, equipment and other "gifts-in-kind," and any other financial assurances to TECH in order that such resources are available to proceed with the project.

6.2 Audit Access. The FOUNDATION agrees to abide by the audit access provisions in Section 18-1-118, MCA.

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

6.4 Notices. All notices given by either Party to the other hereunder shall be mailed by certified or registered mail, or personally delivered as follows:

TO THE FOUNDATION:

Vice Chancellor of Development and University Relations/Foundation President

Montana Tech Foundation

1300 West Park Street

Butte, MT 59701

TO THE UNIVERSITY:

Vice Chancellor for Administration & Finance

Montana Tech of The University of Montana

1300 West Park Street

Butte, MT 59701

6.5 Termination.

This AGREEMENT shall terminate upon project completion unless earlier terminated pursuant to Paragraph 6.1. Upon termination the FOUNDATION shall no longer have any right, title or interest in and to the Alumni Coliseum.

6.6 Indemnification.

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 Turf Project covered by the terms of this AGREEMENT.

Nothing in this Section shall constitute a waiver of either Party's insurer's rights to seek indemnity, contribution or a tender of legal defense from the other Party or the other Party's insurer to the extent permissible by law.

IN WITNESS WHEREOF, the FOUNDATION and TECH have executed this AGREEMENT as of the day and year first above written.

MONTANA TECH FOUNDATION

By: _____
VICE CHANCELLOR OF DEVELOPMENT & UNIVERSITY RELATIONS
FOUNDATION PRESIDENT

MONTANA TECH OF THE UNIVERSITY OF MONTANA

By: _____
CHANCELLOR