

REAL PROPERTY LEASE FOR SITE OF MR TMA VEHICLE STORAGE AND SOUTH SIDE TRANSPORTATION DEMAND MANAGEMENT (TDM) FACILITIES

I. PARTIES:

This real property lease agreement entered into this _____ day of _____, 200__ by and between The University of Montana (UM), a state entity organized pursuant to the laws of the State of Montana, as “Lessor” and the Missoula Ravalli Transportation Management Association (MR TMA), a non-profit corporation organized pursuant to the laws of the State of Montana as “Lessee.”

WITNESSETH

Whereas, UM as Lessor is willing to lease real property located in the southern portion of Dornblaser field, situated between the intersections of South Avenue and Pattee Canyon Drive on South Higgins Avenue to Lessee for purposes of MR TMA as Lessee constructing a building which will serve to store vanpool vehicles, MR TMA office space, a waiting area for alternative transportation users and park-n-ride site as a transportation demand management center pursuant to the terms and conditions set forth in this lease as provided herein and hereby agreed to by the parties. This lease is subject to all required approvals, including but not limited to, the Board of Regents and The Federal Transit Administration (FTA).

II. PREMISES:

(A) Lessor, for and in consideration of the terms, conditions, covenants and agreements herein contained agrees to lease the following legally described real property in southern portion of Dornblaser field in the City of Missoula to Lessee:

A tract of land located in the West ½ Southwest ¼ Northwest ¼ of Section 34, Township 13 North, Range 19 West PMM.

(B) Lessor hereby agrees to allow Lessee to construct on leased premises a transportation demand management center including van storage and park-n-ride facilities and office space, the design of which must be pre-approved by the MR TMA Board of Directors and The University of Montana. Any additional future construction activity by Lessee at the lease site must be pre-approved by the MR TMA Board of Directors and The University of

Montana. As consideration for Lessor allowing Lessee to use this real property, the additional use of adjacent property and constructing a building thereon, Lessor shall be entitled to the use of the storage area located in the van storage area for athletic equipment.

- (C) Lessor shall ensure that construction project payment and performance bonds exist for any construction project they mutually engage in or commences with respect to the leased premises legally described herein. Lessee shall obtain lien waivers from all contractors, including but not limited to, sub-contractors, agents, materialmen, prior to final payments being made on the construction project. Lessor shall be solely responsible for defending, removing and satisfying any lien asserted against the leased premises arising out of mutual construction activity, occupation or use of leased premises.
- (D) Lessee shall ensure, with respect to any construction activity that occurs, that any required prevailing wages for the construction project are paid as required by law.
- (E) Once constructed, and during the term of the lease and any renewal thereof, the TDM center on Lessor's land, all improvements so constructed or installed, including buildings, shall become the property of Lessee.
- (F) Any fixture permanently affixed to either the land or building, as of the date the lease terminates or expires, so that it is not easily removable without damaging or impairing the property it is attached to, shall become the property of Lessor unless Lessor otherwise indicates in writing. Articles or items of personal property attached to the property that are easily detachable or removable without damaging or impairing Lessee's use of the property or the property the article or item is attached to, shall be the property of Lessee and may be removed by Lessee.
- (G) Lessee shall be entitled to the possession, lease and control of the above-mentioned buildings and joint oversight of the park-n-ride improvements for one dollar (\$1) per year for a term of twenty (20) years until September 30, 2025; as long as the property is used by Lessee as a transportation demand management center and Lessee complies with the conditions and provisions of this lease agreed to by the parties as provided herein.
- (H) This lease shall be subject to public utility or other easements of record that may exist on the real property.

- (I) Any building or improvements mutually constructed or installed by Lessor and Lessee on the leased land shall be in compliance with the federal Americans with Disabilities Act.
- (J) Lessee shall be responsible for the payment of any and all utility costs arising out of Lessee's occupation or use of the TDM facility premises.
- (K) Lessor shall be responsible for the payment of any and all utility costs attributable to the park-n-ride.
- (L) Lessee shall be responsible for the administration, management, control and operation of the TDM facilities during the lease period(s).
- (M) If Lessee decides to relocate its TDM center site during the twenty (20) year term of the lease, Lessee shall be responsible for the pro rata repayment of any original construction monies to the United States government.
- (N) If Lessor terminates or interferes with Lessee's ability to use the leased property during the initial twenty (20) year term so that Lessor may use the land for other purposes, Lessor agrees to pay any remaining pro rata repayment monies that would be owed to the United States government arising out of federal monies being used to pay for the original construction of the transfer center.
- (O) Lessor's activities shall not interfere with transit operations at anytime during the lease. Lessee shall maintain satisfactory continuing control of all federally funded facilities.
- (P) Lessee will report to Lessor, City of Missoula, Missoula County Commissioners, MR TMA contributors and Federal Transit Administration operating data quarterly including the total number of vehicles served, total number of miles accumulated, total number of days operated, and average number of hours per day. Additional assessment and evaluation of the Transportation Demand Management program will be made annually in a report to the Lessor, MPO, Montana Department of Transportation, Federal Highway Administration, and Federal Transit Administration.
- (Q) Lessee, represented by Director of Community Affairs, MR TMA Board Chair and Co-chair and Lessor, represented by Public Safety Director, Facilities Services Director and ASUM Transportation Coordinator, shall meet at least quarterly, unless Lessor and Lessee agree otherwise, to discuss all activities pertinent to the facility site. The committee chair shall rotate each quarter between a Lessee and Lessor member. The committee tasks

shall also include development and submission of specific proposals regarding site and related activities; and discussion of all site activities.

III. ALTERATIONS & REPAIRS

Neither party may materially alter the leased premise without the other party's express prior written consent.

IV. TERM AND RESERVATION OF LESSOR'S RIGHT TO TERMINATE

- (A) Lessee shall have the right to have and to hold, control, manage and administer the leased premises for transportation demand management center purposes for a term of twenty (20) years, with the first right to renew the lease for another twenty (20) year term for transportation demand management center purposes at the lease rate of the equivalent of \$1 per year based on a reliable governmental or other nonpartisan publication evaluating the purchasing power of money, in writing executed by both parties. Lessee must provide notice of its interest and desire to renew this lease at least 240 days in advance of the expiration of this lease. Lessor and Lessee may agree to revisions to the lease at the time of renewal. Lessor and Lessee may agree to revisions of the lease at anytime during the lease.
- (B) All Federally funded improvements made on the leased property for which ownership has not previously transferred to Lessor prior to abandonment or expiration of this lease, including any renewal thereof in writing executed by both, shall revert back to and become the property of Lessor at either abandonment or the expiration. Until ownership of any building or improvement transfers to Lessor, Lessee shall be responsible for any property, casualty or liability insurance for any building or improvement and shall identify Lessor as an additional insured on any property insurance policy and if the premises, building or improvement are rendered untenable by fire or other casualty, Lessee shall immediately take action to ensure the safety of the site and within thirty (30) days present to Lessor a plan for repairing, rehabilitating or removing any unsafe or untenable condition.
- (C) Lessee agrees that the insurance proceeds from any insured loss with respect to any portion of the premises, including but not limited to any construction thereof, will be used to restore, rebuild, or clear the land unless otherwise indicated in writing by Lessor.
- (D) Lessee shall acquire and maintain for the term of the lease, including any renewal, liability insurance for personal injury including death, as well as

third party property damage, in the amount of Seven Hundred Fifty Thousand and no 0/100 dollars (\$750,000) for each occurrence with One Million Five Hundred Thousand and no 0/100 dollars (\$1,500,000) umbrella coverage, and shall name Lessor as additional insured on the policy. Lessor will acquire and maintain comparable insurance through the State of Montana self-insurance fund, treating Lessee as an additional named insured. Coverage amounts shall be renegotiated at least every three (3) years during the lease term, including any renewals thereof.

V. MAINTENANCE OF PREMISES:

- (A) Lessee agrees that it will keep the van storage and TDM center facilities in good repair and in a safe and healthy condition for public use of the property during the term of the lease and upon abandonment or termination of this lease will yield up the premises to Lessor in good condition and repair, ordinary wear excepted.
- (B) Lessor agrees that it will keep the park-n-ride facility in good repair and in a safe and healthy condition for public use of the property during the term of the lease. Lessor maintenance responsibility shall include ice and snow removal of the park-n-ride facility and keeping facility maintained and in good repair, ordinary wear excepted.
- (C) Lessee acknowledges Lessor's right to impose user fees for the purpose of site maintenance. Terms and conditions will be mutually agreeable to Lessor and Lessee.

VI. PARKING:

Lessor and Lessee shall provide nonexclusive parking for the benefit of the University students and faculty, vanpoolers, carpoolers, and Mountain Line riders. If the community, for example The Missoula Downtown Association, wishes to use the entire lot for non-conflicting special events they must request approval by providing Lessee and Lessor all other parties written notice at least fifteen (15) days prior to the event. Such parking shall not interfere with transit use of the subject property.

VII. SIGNS AND ADVERTISING:

Lessee signs are to be in conformity with City and County of Missoula sign regulations; Lessor signs are to be in conformity with the UM Sign Guide and Montana State Law. Lessor and Lessee will jointly be responsible for all informational signage, directing the public as to facilities and usage. Lessor and

Lessee will jointly determine the development of any commercial advertising that directly supports or benefits the facility or service provided. Any revenues derived from such advertising shall be spent on maintaining and improving the leased premises and activities related to the purpose of this lease as determined by the committee described in paragraph II (Q) above.

VIII. SUBLETTING OR ASSIGNMENT OF LEASE:

- (A) Parties shall neither sublet nor assign any of their respective interest or rights in this lease or the premises to any person, corporation or other entity for retail purposes without the written consent and approval of the other party.
- (B) Parties shall neither sublet nor assign any of their respective interest or rights in this lease or the premises to any person, corporation or other entity for park-n-ride purposes without the written consent and approval of the other party.

IX. COMPLIANCE WITH LAWS, REGULATIONS, AND RESTRICTIONS:

Lessee shall comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal and other agencies, or bodies having any jurisdiction thereof) relating to the use, condition, or occupancy of the Leased Premises. Lessor and Lessee will comply with provisions of all appropriate federal laws, including Title VI and Title VII of the Civil Rights Act of 1964. Parties agree that the hiring of persons to perform work will be made on the basis of merit and qualifications without discrimination on the basis of race, religion, sex, age, creed, marital status, political belief, physical or developmental disabilities, or national origin. Lessee shall indemnify and save and hold Lessor harmless from Lessee's violation of any laws and ordinances. Lessee will operate a drug-free workplace.

X. LESSEE TO INDEMNIFY, HOLD HARMLESS AND DEFEND LESSOR:

Lessee agrees to indemnify, hold harmless and defend Lessor against any and all actions, liabilities, judgments, costs, damages and expenses which may arise out of Lessee's use of the premises or which may accrue against, be charged to or recovered from Lessor by reason or on account of damage to the leased premises or operations conducted at the leased premises including acts of Lessee's agents, contractors and subcontractors. Any final judgments rendered against Lessor resulting from any cause for which Lessee is liable with respect to the leased premises, shall be conclusive against Lessee as to Lessee liability and amount. All property of Lessee stored on the Leased Premises shall be so kept or stored at the

risk of Lessee, and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier.

XI. LESSEE RESPONSIBLE FOR ASSESSMENTS:

Lessee and Lessor shall be each responsible for paying one-half of any special improvement district street lighting, sidewalk or other special assessment assessed during the lease period

XII. LEASE PROVISIONS BINDING ON SUCCESSORS IN INTEREST:

Lessor and Lessee agree that the provisions and covenants of this lease shall be binding upon, apply and inure to any successors in interest or assigns of the respective parties to the extent assigns are authorized in Paragraph VIII (A) above.

XIII. TERMINATION OF LEASE PURSUANT TO LESSEE'S DEFAULT OR ABANDONMENT:

- (A) If Lessee ceases using the leased premises as a transportation demand management center, Lessor may deem Lessee's abandonment as Lessee's termination of this lease.
- (B) If either party otherwise desires to terminate this lease, the terminating party may do so by giving one hundred and twenty (120) days written notice to the other party.
- (C) In the event of any breach of any provision, term, covenant or condition contained in this lease by Lessee, Lessor shall give written notice to Lessee by certified or registered mail in the event of a breach. Should Lessee fail to correct the breach within thirty (30) days of the date of the notice, Lessor reserves the right to terminate this lease. Failure or neglect of Lessor to act upon any breach of one or more provisions, terms, covenants or conditions contained herein shall not constitute or be construed as a waiver of any subsequent breach of any kind by Lessee and Lessor reserves the right that it may act on any breach that occurs. Lessor may also terminate the lease if Lessor determines that there is a public need to use the premises for another purpose.
Lessor reserves the right to terminate this lease if Lessee is in default with respect to compliance with the provisions of this lease or Lessee abandons or voluntarily terminates its use of the premises or lease rights.

XIV. NOTICES:

Whenever it is necessary for a party to provide notice to the other party, notices to the respective parties shall be mailed or personally delivered to the other party as follows:

LESSOR: Director, Office of Public Safety
Building 32, University of Montana
Missoula, MT 59812

LESSEE: Director
Missoula Ravalli TMA
NHN Dornblaser Field
Missoula, MT 59801

XV. SEVERABILITY:

It is Lessor and Lessee's intent that if for any reason a final court ruling invalidates any provision, covenant, term or condition of this lease, all remaining provisions, covenants, terms or conditions shall remain in full force and effect.

LESSOR:

LESSEE:

Robert A. Duringer, VP for Adm. & Finance
The University of Montana

Bill Carey, Chair
Missoula Ravalli TMA

ATTEST:
