

Summary of Washington Grizzly Stadium New Stadium Lights Project Agreement and Lease

State law allows for the lease of an athletic facility to a related nonprofit foundation to make facility improvements. The Board of Regents must approve the lease agreement and certify to the budget director that the conditions of 20-25-309(1), MCA, have been satisfied. The terms of the proposed lease between UM-Missoula and the UM Foundation are summarized below.

Joint Planning and Budgeting. The Foundation and UM will jointly oversee the project programming, design and budget with UM performing the role of project manager. The University will prepare and submit plans, specifications, and other construction documents to the Foundation, as well as conduct pre-construction meetings and review supplies and equipment purchase needs with the Foundation.

Foundation Responsibilities. The Foundation will (1) coordinate and direct the project planning, design and construction; (2) make all contracts needed for project design and construction; (3) make all project contract payments; (4) be the stadium lessee during the project and transfer the leased premises free of encumbrances to the Regents upon project completion; (5) ensure acquisition of all permits and inspections, and pay all taxes and fees, required for the project; and (6) properly insure the project.

University Responsibilities. The University will (1) reimburse the Foundation for all payments and costs related to the project; (2) as project manager, make all approvals and disapprovals needed to facilitate Foundation fulfillment of its project responsibilities and obligations, utilizing University personnel for this purpose; (3) provide the Foundation all information regarding the leased premises needed for the project; (4) provide the Foundation with all project information and specifications for Foundation communicate to the project contractor; (5) provide project site security; (6) provide the Foundation with a project financial plan; and (7) review and recommend all project payment requests.

Lease provisions. The Foundation will use the leased premises solely for project purposes; and University personnel will have access at all times to these premises. The Foundation will transfer back these premises as needed for University events scheduled there while the project is being completed.

Claims Provisions. The parties indemnify each other against their respective negligence and other tortious acts or omissions, as well as each other's material breaches of the Agreement.

Funding. The University will provide the Foundation with all project funds less contributions, if any; and BOR/University financial obligations to the Foundation will not exceed available project funds less contributions. Only funds authorized by applicable laws and Regents policies for use in this project will be pledged to meet project financial obligations.

Compliance with Laws and Policies. The Foundation will comply with all laws, ordinances, lawful orders and regulations, and all BOR and University policies applicable to the project.

STADIUM PROJECT
AGREEMENT AND LEASE

This AGREEMENT AND LEASE (AGREEMENT) is entered into by and among the Board of Regents of the Montana University System (BOR), a state agency having its principal office at 2500 Broadway, Post Office Box 203201, Helena, Montana 59620-3201, The University of Montana (UNIVERSITY), a campus of the Montana University System, located at Main Hall, Missoula, MT 59812 and The University of Montana Foundation (FOUNDATION), a non-profit corporation organized and existing under the laws of the State of Montana, having its principal office at Brantly Hall, The University of Montana, Missoula, Montana 59812.

RECITALS

WHEREAS, on January 21, 1983, the BOR authorized The University of Montana (UNIVERSITY) to renovate or construct a new UNIVERSITY Football Stadium (Stadium) and authorized the UNIVERSITY to seek a Joint Resolution of the Montana Legislature consenting to this project; and

WHEREAS, in 1983, the Legislature, through adoption by the 48th Legislature of Senate Joint Resolution No. 14, consented to the BOR's authorization to the UNIVERSITY to renovate or construct a new stadium complex at the UNIVERSITY; and

WHEREAS, the FOUNDATION is a non-profit corporation organized under the laws of the State of Montana to raise and provide funds in part to assist the athletic program of the UNIVERSITY; and

WHEREAS, the FOUNDATION is willing and, acting with the assistance of the UNIVERSITY as further detailed in the Memorandum of Understanding of equal date herewith between the UNIVERSITY and the FOUNDATION, is able to assist the UNIVERSITY with major expansion and renovation of the Stadium by undertaking the responsibility for managing contributions and other funds available from the UNIVERSITY and other sources, as well as services and property provided for the project; contracting for the construction and other services, materials and work required; and thereafter conveying, transferring and contributing the Stadium and related improvements to the UNIVERSITY; and

WHEREAS, in 1985, the Legislature, through adoption by the 49th Legislature of Senate Bill No. 385, now codified as Sections 20-25-441 and 442, MCA, authorized the BOR to lease land to the FOUNDATION for construction or renovation of a UNIVERSITY Stadium under certain conditions, with the express purpose of excluding the Stadium project from Montana public facilities construction bid requirements in order to take advantage of significant contributions; and

WHEREAS, such a project is further authorized by the terms of Sections 20-25-309 and 18-2-102 (2)(d), MCA; and

WHEREAS, the FOUNDATION successfully managed the 1985 Stadium project resulting in the construction of Washington-Grizzly Stadium, in addition to subsequent major Stadium expansion and renovation projects in 2001 and 2007 (Eastside Seating Expansion); and

WHEREAS, the 1985 legislation still has full legal effect for the purpose of authorizing a similar BOR lease with the FOUNDATION for future Stadium renovation purposes; and

WHEREAS, on January____, 2012, the BOR approved a project to plan for, design and install outdoor stadium lights in Washington-Grizzly Stadium at a project cost estimated not to exceed \$1,000,000, to be financed using funds borrowed under the state InterCap Loan program, with the source of repayment to be Athletic Designated funds including ticket sales, sponsorship revenue, NCAA and Big Sky Conference revenue; and

WHEREAS, the BOR desires that the FOUNDATION undertake this construction project in accordance with the UNIVERSITY's goals and other requirements identified herein and wishes to allow for completion of the project and to accept the assistance of the FOUNDATION as proposed, and by this document identify the conditions acceptable to all parties enabling the FOUNDATION to undertake and complete the Stadium outdoor lighting project ("Stadium Lighting Project") for the use and benefit of the UNIVERSITY, and to specifically authorize the UNIVERSITY to act for and on behalf of the BOR in all matters subject to this AGREEMENT.

NOW THEREFORE, the Parties agree as follows:

SECTION I

Purpose and General Responsibilities

1.1 Purpose. The BOR desires to authorize the FOUNDATION to accept contributions and manage funds transferred from the UNIVERSITY for the Stadium Lighting Project at Washington-Grizzly Stadium. All costs associated with the Stadium Lighting Project will be the responsibility of the University as set forth herein and in the Memorandum of Understanding. The BOR further desires to authorize the FOUNDATION to enter the premises of the UNIVERSITY to coordinate all planning, design and construction work necessary to complete the proposed Stadium Lighting Project. The purposes of this AGREEMENT are therefore to authorize the

FOUNDATION to undertake activities for planning, designing and coordinating the Stadium Lighting Project; to identify the responsibilities of each Party in this undertaking; and to provide for the transfer and contribution of the Stadium-related improvements to the UNIVERSITY upon Project Completion (as hereinafter defined).

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 Stadium Lighting Project.

1.2.2 The FOUNDATION will enter into all contracts required for the design and construction of the Stadium Lighting Project. All proposed contracts shall be submitted to the UNIVERSITY for review and approval. The UNIVERSITY will provide qualified UNIVERSITY personnel to assist the FOUNDATION in supervising and directly participating in project construction management and design activities.

1.2.3 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 AGREEMENT and the Memorandum of Understanding with respect to the payment by or reimbursement of all costs of the Stadium Lighting Project by the UNIVERSITY, the State of Montana, BOR, the Montana University System and the UNIVERSITY 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 Stadium Lighting Project.

1.2.4 The FOUNDATION will function as the lessee of the Stadium commencing on the date this AGREEMENT is executed and continuing until the conveyance, transfer and

contribution of the renovated and improved Stadium to the BOR for the use and benefit of the UNIVERSITY upon Project Completion; except that the FOUNDATION lessee status shall as necessary be suspended during all UNIVERSITY home football games (including reasonable preparation times before and after such home football games), or at any other times prior to or during the football season when the stadium is utilized for football-related activities, as well as during all other UNIVERSITY activities and events requiring Stadium use, for the purpose of allowing the UNIVERSITY to maintain Stadium ownership, control and management during such games or other activities and events. Provided, however, it is the expectation of the parties that the Stadium Lighting Project will be completed prior to the first football game in the fall of 2012. Any FOUNDATION lessee status suspension pursuant to this Section shall apply solely to the lease and occupancy of the Stadium property, and shall not apply to or affect other FOUNDATION duties and obligations with regard to the Stadium Lighting Project.

1.2.5 Upon Project Completion, as provided herein, and as further defined under Section 5.8, and upon payment by the UNIVERSITY of all costs of the Stadium Lighting Project, this Lease shall automatically terminate as provided in 6.5 without any further action required by either party, and the Stadium shall automatically transfer and convey back to the BOR for the use and benefit of the UNIVERSITY free of any encumbrances on or any FOUNDATION interest in the Stadium created by reason of this Lease; and the BOR shall after such termination have all right and title thereto for the use and benefit of the UNIVERSITY.

1.3 University Responsibilities.

1.3.1 The UNIVERSITY shall reimburse the FOUNDATION all payments relating to the Stadium Lighting Project, including but not limited to payments for taxes, fees (including all

reasonable legal fees incurred by the FOUNDATION), insurance, and for all labor, material and services provided by third parties in connection with the Stadium Lighting Project. The UNIVERSITY shall reimburse the FOUNDATION in full for all such payments within three (3) business days of the UNIVERSITY'S receipt of proof of such payments from the FOUNDATION.

1.3.2 It shall be the responsibility of the UNIVERSITY as project manager to make recommendations, and give approvals or disapprovals as provided in this AGREEMENT in a timely and professional manner to facilitate the activities of the FOUNDATION in completing the project, utilizing UNIVERSITY personnel for this project pursuant to Paragraph 1.2.2. The UNIVERSITY and the FOUNDATION have memorialized the obligations of the UNIVERSITY in assisting the FOUNDATION as project manager in the Memorandum of Understanding of equal date herewith between the UNIVERSITY and the FOUNDATION.

1.3.3 The UNIVERSITY will provide to the FOUNDATION all available information regarding existing conditions at the proposed Stadium Lighting Project site(s), including drawings of existing structures, topography, utilities and subsurface conditions.

1.3.4 The UNIVERSITY specifically agrees to provide to the FOUNDATION, so that the FOUNDATION may provide to the Contractor, the following:

- a. The information, drawings and specifications, describing the physical characteristics, legal limitations and utility locations for the site of the project, and a legal description of the site.
- b. General security for the site.

- c. Any other information, data or documentation in possession of, or available to, the UNIVERSITY that may reasonably be needed by the contractor to complete the project.

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, in addition to all easements, both apparent and of record, the property described in the plat attached as Exhibit 1 hereto and incorporated herein as a part of this AGREEMENT for the purpose of completing the necessary planning, design and construction of the Stadium Lighting Project in the Stadium in accordance with the plans and specifications approved by the UNIVERSITY and the requirements identified herein. The FOUNDATION shall not use or permit to be used the demised premises or any part thereof for any purpose or purposes other than the purpose or purposes for which the demised premises are hereby leased, i.e. the Stadium Lighting Project.

2.1.2 This AGREEMENT shall continue until Project Completion, which is anticipated to be _____ **2012.**

2.1.3 The FOUNDATION shall permit the UNIVERSITY and its authorized agents and employees to enter upon the demised premises at any and all times to inspect the premises or for any other purpose incidental to the UNIVERSITY's business.

2.1.4 The FOUNDATION shall maintain emergency access to the site.

2.2 Covenant Not to Sue - Assignment of Rights to the University. The UNIVERSITY and the BOR 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 Stadium. The FOUNDATION shall assign to the UNIVERSITY all rights and claims it may have against all contractors, suppliers or any persons or firms involved with the project. The UNIVERSITY 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 the UNIVERSITY 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 the UNIVERSITY.

SECTION III

Funding

3.1 Funding and Financial Plan. The FOUNDATION has the primary responsibility for accepting and managing Stadium project funds. The UNIVERSITY has agreed to cooperate fully with these FOUNDATION efforts. It is estimated that the Stadium Lighting Project cost will be approximately **\$1,000,000**.

The UNIVERSITY has developed and will provide to the FOUNDATION a financial plan outlining the estimated costs of the project by principal segments of the work as normally accepted in the construction industry, and the total amount necessary to fund the total project. Moreover, the FOUNDATION may receive, but has no obligation to solicit, donations for this project, and in fact neither the BOR nor the UNIVERSITY is relying on donations to fund this project. Except as otherwise provided by Paragraph 6.6 herein, the BOR and the UNIVERSITY

have no financial obligation to the FOUNDATION other than the cost of the project less contributions, and it is expressly acknowledged that there is no commitment of any other BOR or UNIVERSITY funds to any portion of this project except to the extent the BOR may lawfully pledge revenues at the UNIVERSITY for this project, pursuant to MCA Section 20-25-441 or otherwise; or unless the BOR authorizes such a commitment by a future lawful action. In addition, the FOUNDATION shall not be obligated to spend funds in excess of those received from the UNIVERSITY plus the value of contributions for this project.

All monies transferred and made available to the FOUNDATION by the UNIVERSITY pursuant to this Agreement may be used only in connection with the Stadium Lighting Project; and the UNIVERSITY will transfer such monies to the FOUNDATION to pay project costs as they are incurred, billed, and funding is available as outlined in the plan. Requests for such transfer from the UNIVERSITY shall include a copy of the invoice from the Contractor. Sufficient accounts and records will be maintained by the FOUNDATION to enable the UNIVERSITY to ascertain that funds expended from the FOUNDATION were in fact expended for this project.

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 the UNIVERSITY for review and approval, and shall make those corrections required by the UNIVERSITY. No construction shall commence without final approval of all plans, specifications and drawings by the UNIVERSITY. Copies of the final plans, specifications and drawings shall be filed with the

UNIVERSITY prior to the commencement of any construction. The UNIVERSITY shall ensure compliance with the requirements of MCA Section 18-2-103(1)(a) in connection with the review and acceptance of all plans, specifications, and cost estimates prepared by architects or consulting engineers pursuant to Section IV of this Lease.

4.2 Construction and Completion Schedules. The FOUNDATION will submit to the UNIVERSITY an overall completion schedule for the project. Such schedule will reflect necessary approvals by the UNIVERSITY, including but not limited to approval of all architect and construction contracts and related documents. The following specific items must be presented to the UNIVERSITY for approval:

- a. completion schedule;
- b. plans and specifications;
- c. construction contract and related documents, including certificates of insurance;
- d. estimated construction schedules and revised schedules, if any;
- e. authorization to commence construction; and
- f. project acceptance.

It is acknowledged that the goal for completion of the Stadium Lighting Project is _____ 2012.

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 the FOUNDATION has accepted the financial plan submitted by the UNIVERSITY and the project completion schedule, but prior to the start of construction, the UNIVERSITY 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 renovation phases of the Stadium Lighting Project. The FOUNDATION, through the FOUNDATION's Architect, will outline the responsibilities of these various entities during the progress of the Stadium project for the UNIVERSITY's approval.

4.4 Equipment Samples, Materials Lists. The FOUNDATION shall submit to the UNIVERSITY, 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 the UNIVERSITY.

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 University Regulations. With UNIVERSITY assistance, 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 the UNIVERSITY; all federal and Montana anti-discrimination laws; and all federal, state and local

occupational safety and health standards bearing on the Stadium Lighting Project and related improvements on the demised 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 Stadium Lighting Project and construction. As provided in MCA Sections 20-25-442 and 20-25-309(2), the Stadium Lighting 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 Stadium Lighting Project and shall protect the UNIVERSITY'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 Stadium Lighting 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 the UNIVERSITY 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 of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be the FOUNDATION's responsibility, with UNIVERSITY 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 the UNIVERSITY, 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 the UNIVERSITY naming the UNIVERSITY as an additional insured.

5.4 Inspection. The UNIVERSITY will have full rights to inspect the Stadium Lighting Project site during the project for compliance with approved construction documents and the requirements of this AGREEMENT.

5.5 Utilities During Construction. The UNIVERSITY will provide access to its electrical power source for purposes of the Stadium Lighting Project. The Contractor will make the necessary connections. Except as herein above provided and as set forth in Section 1.3.3 above, the FOUNDATION will furnish all other utilities required for completion of the project as part of the project cost.

The FOUNDATION shall make reasonable efforts to minimize disruption of the utility services of the UNIVERSITY and shall coordinate with the UNIVERSITY 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 the UNIVERSITY 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 Salvaged Material. The FOUNDATION shall legally dispose of all unusable material.

5.7 Change Orders. The FOUNDATION shall have the right to incorporate necessary and desirable changes during the project subject to the review and approval of the UNIVERSITY, and to the extent required by applicable law, the Montana Department of Administration. Such review and approval shall be undertaken in accordance with the same procedure utilized for review and approval of the original plans and specifications, and shop and setting drawings.

Requested changes will not be approved unless they are in accordance with the financial plan and adequate funds are available to pay any increase in costs.

5.8 Project Completion. The UNIVERSITY, on behalf of the BOR, shall inspect and accept the Stadium Lighting Project at the earlier of (i) when completed according to approved construction documents, or (ii) midnight on _____, 2012("Project Completion"). Prior to final acceptance of the Stadium Lighting Project by the UNIVERSITY, the FOUNDATION shall deliver to the UNIVERSITY 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 two 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 Stadium Lighting Project.

SECTION VI

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 the UNIVERSITY or otherwise be guilty of a substantial violation of

any provision of this AGREEMENT, the UNIVERSITY 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 the UNIVERSITY 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 the UNIVERSITY 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 BOARD OF REGENTS:

Board of Regents of the Montana University System
c/o Vice President for Administration & Finance
The University of Montana
Missoula, MT 59812

TO THE FOUNDATION:

The University of Montana Foundation
Brantly Hall East Wing
Missoula, MT 59812

TO THE UNIVERSITY:

Vice President for Administration & Finance
The University of Montana
Missoula, MT 59812

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 Stadium as lessee or otherwise, and the BOR shall thereafter have all right and title thereto for the use and benefit of the University.

6.6 Indemnification.

6.6.1 Contractual Liability. During the entire term of this AGREEMENT and thereafter following conveyance to the BOR of the Stadium Lighting Project, the UNIVERSITY for itself and on behalf of the BOR shall, except to the extent any such claims or causes of action are attributable to a willful material breach of this AGREEMENT by the Foundation, fully indemnify, pay, protect, defend and hold harmless (with counsel reasonably approved by the Foundation) the Foundation (and its successors, assigns, employees, officers, directors and agents), from and against any claims, demands, damages, injuries, costs, expenses, losses, liabilities, causes of action, judgments, executions, interest, fines, charges or penalties (including reasonable legal fees and

expenses in enforcing this indemnity and hold harmless or defending any claims hereunder), to the extent any such claims, demands, causes of action, etc. are not covered by insurance, arise directly or indirectly out of, or are, attributable to or connected in any way with the Foundation's participation in or its duties and obligations with respect to the Stadium Lighting Project covered by the terms of this AGREEMENT, the Memorandum of Understanding or other contracts to which Foundation is a party in connection with the Stadium Lighting Project under Section 1.2.2 or otherwise.

6.6.2 Negligence and Tort Liability. During the entire term of this AGREEMENT and thereafter following conveyance to the UNIVERSITY of the Stadium Lighting Project, the Parties agree to fully indemnify, pay, protect, 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, judgments, executions, interest, fines, charges or penalties (including reasonable attorney fees and expenses in enforcing this indemnity and hold harmless or defending any claims hereunder), to the extent any such claims, demands, causes of action, etc. are not covered by insurance and arise from the indemnifying Party's own negligent or other tortious acts or omissions, and which directly or indirectly arise out of, or are attributable to or connected in any way with the Stadium Lighting Project covered by the terms of this AGREEMENT. Nothing in this Section 6.6.2 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.

6.6.3 Legal Authority. By executing this AGREEMENT, the parties confirm that they and their respective legal counsel have reviewed said AGREEMENT and determined to their

satisfaction that the parties have the legal power and authority to enter into this Lease and the Stadium Lighting Project covered hereby (and with respect to the UNIVERSITY the Memorandum of Understanding), that they have received all necessary approvals therefor, and have complied with all applicable FOUNDATION and BOR policies and procedures (with respect to the FOUNDATION and the BOR) and any applicable UNIVERSITY policies and procedures (with respect to the UNIVERSITY) in connection with the approval of this AGREEMENT, the Stadium Lighting Project and, with respect to the UNIVERSITY the Memorandum of Understanding.

IN WITNESS WHEREOF, the FOUNDATION has caused these presents to be executed in several copies by its proper officers at Missoula, Montana, this _____ day of _____, 2012, and the UNIVERSITY has caused the same to be executed in several copies by its proper officers at Missoula, Montana, this _____ day of 2012.

THE UNIVERSITY OF MONTANA FOUNDATION

By: _____
PRESIDENT & CEO

Attest:

SECRETARY, UM FOUNDATION

BOARD OF REGENTS OF THE MONTANA
UNIVERSITY SYSTEM

By: _____
PRESIDENT, THE UNIVERSITY OF MONTANA

Attest:

Vice President for Administration and Finance

THE UNIVERSITY OF MONTANA

By: _____
Its President

Attest:

Vice President for Administration and Finance