

**AUDIT COMMITTEE  
JUNE 18, 2009**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION OPERATING AGREEMENT	Motion to approve

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**AUDIT COMMITTEE**  
**APRIL 18, 2009**

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**SUBJECT**

Board approval of Eastern Idaho Technical College (EITC) Operating Agreement with Eastern Idaho Technical College Foundation

**REFERENCE**

June 2008                                      Audit Committee meeting update for Board of Education

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.E.

**BACKGROUND/DISCUSSION**

In June, the Audit Committee informed the Board that the institutions would bring the Foundation operating agreements, (pursuant to the revised policy section V.E., effective July 1, 2008), to the Board for approval.

**IMPACT**

According to Board Policy V.E.2.a.(2) the Foundation "shall be brought into substantial conformance with these policies and, upon so doing; the institution shall provide prompt notice to the Board in order that the Board may recognize the affiliated foundation. Upon recognition by the Board, the organization of the nonprofit corporation or foundation is ratified, validated, and confirmed, and it shall be deemed to have been organized as if its organization had taken place under authority of this policy. Likewise, any new foundations established subsequent to implementation of this policy must be brought to the Board for formal recognition before such foundation begins operations."

**ATTACHMENTS**

Attachment 1 – EITC Foundation Operating Agreement

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**STAFF COMMENTS AND RECOMMENDATIONS**

The Audit Committee has met several times to review the operating agreement and recommends approval by the Board.

Staff recommends approval of the college's Foundation operating agreements.

**BOARD ACTION**

A motion to approve the Memorandum of Understanding between the Eastern Idaho Technical College Foundation and Eastern Idaho Technical College, and to recognize the Eastern Idaho Technical College Foundation as an affiliated foundation to benefit Eastern Idaho Technical College.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_ No \_\_\_

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**OPERATING AGREEMENT  
BETWEEN  
EASTERN IDAHO TECHNICAL FOUNDATION, INC.  
AND  
EASTERN IDAHO TECHNICAL COLLEGE**

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2008, is between Eastern Idaho Technical College, herein known as “College” and the Eastern Idaho Technical College Foundation, Inc., herein known as “Foundation”.

WHEREAS, the Foundation was organized and incorporated in 1992 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College.

WHEREAS, the Foundation exists to raise and manage private resources supporting the mission and priorities of the College, and provide opportunities for students and a degree of institutional excellence unavailable with state funding levels.

WHEREAS, the Foundation is dedicated to assisting the College in the building of the endowment to address, through financial support, the long-term academic and other priorities of the College.

WHEREAS, as stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the College; soliciting cash, securities, real and intellectual property, and other private resources for the support of the College; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

WHEREAS, furthermore, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Agreement, personnel experienced in planning for and managing private contributions and works with the College to assist and advise in such activities.

WHEREAS, the parties hereby acknowledge that they will at all times conform to and abide by, the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations policy, § V.E., and that they will submit this Agreement for initial prior State Board of Education ("State Board") approval, and thereafter every two (2) years, or as otherwise requested by the State Board, for review and re-approval.

NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE I**

### **Foundation's Purposes**

The Foundation is the primary affiliated foundation responsible for securing, managing and distributing private support for the College. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and Bylaws, and the State Board's Policies and Procedures, the Foundation shall: (1) solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the College from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the College; and (3) support and assist the College in fundraising and donor relations.

In carrying out its purposes the Foundation shall not engage in activities that conflict with (1) federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) applicable policies of the State Board; or (3) the role and mission of the College.

## ARTICLE II

### Foundation's Organizational Documents

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the College and the State Board. All amendments of such documents shall also be provided to the College and the State Board. Furthermore, the Foundation shall, to the extent practicable, provide the College with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

## ARTICLE III

### College Resources and Services

#### 1. College Employees.

a. *College/Foundation Liaison:* The College's President shall serve as the College's Liaison to the Foundation.

- i. The College's President shall be responsible for coordinating the College's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the College to the Foundation.
- ii. The College President or her/his designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the College to the the Foundation's Board of Directors regarding the College's coordination with the Foundation's fundraising efforts.

b. *Executive Director:* The *Executive Director* of the Foundation is an employee of the College loaned to the Foundation. All of the *Executive Director's* services shall be provided directly to the Foundation as follows:

- i. The *Executive Director* shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the *Executive Director* may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iii below. The *Executive Director* shall be subject to the control and direction of the Foundation.
- ii. The *Executive Director* shall be an employee of the College and entitled to College benefits to the same extent and on the same terms as other full-time College employees of the same classification as the

*Executive Director.* The Foundation shall reimburse the College for all costs incurred by the College in connection with the College's employment of the *Executive Director* including such expenses as salary, payroll taxes, and benefits.

- iii. The Foundation and the College shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the *Executive Director* is an employee of the College but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the College with respect to the *Finance Director*, including the following:
  - 1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.
  - 2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the College to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the College.
  - 3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or College requirements.

c. *Other Loaned Employees.* Other loaned employees providing services pursuant to this Agreement shall also serve pursuant to a Loaned Employee Agreement, Exhibit "A", which shall set forth their particular responsibilities and duties.

d. *Other College Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the College and the Foundation determine it is appropriate for one or more additional College employees who function in a key administrative or policy making capacity for the College (including, but not limited to, any College Dean or equivalent position)



to serve both the College and the Foundation, then, pursuant to Section V.E.2.c.1.a. of the Board Policy Statement, this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such College employee.

e. *Limited Authority of College Employees.* Notwithstanding the foregoing provisions, no College employee who functions in a key administrative or policy making capacity for the College (including, but not limited to, any College Dean or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

2. Support Staff Services. The College shall provide administrative, financial, accounting, and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). All College employees who provide support services to the Foundation shall remain College employees under the direction and control of the College, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the College the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.

3. College Facilities and Equipment. The College shall provide the use of the College's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the College and the Foundation. The terms of use (including amount of rent) of the College's office space, equipment and associated services shall be as set forth in the Service Agreement, Exhibit "B" hereto.

4. No Foundation Payments to College Employees. Notwithstanding any contrary provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a College employee in connection with any resources or services provided to the Foundation pursuant to this Article of this Operating Agreement.

#### **ARTICLE IV**

##### **Management and Operation of Foundation**

#### 1. Gift Solicitation.

a. *Authority of College President.* All Foundation gift solicitations shall be subject to the direction and control of the College President.

b. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the

College; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

c. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the College.

## 2. Acceptance of Gifts.

a. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the College, the Foundation shall obtain the prior written approval of the College, and where required by State Board policy, approval of the State Board. Similarly, the Foundation shall also obtain the prior written approval of the College of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the College.

b. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the College shall be approved by the State Board before acceptance by the College and the Foundation. In cases where the real property is intended to be used by the College in connection with carrying out its proper functions, the real property may be conveyed directly to the College, in which case the College and not the Foundation shall be responsible for the due diligence obligations for such property.

c. *Processing of Accepted Gifts.* All gifts received by the College or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office in accordance with the Service Agreement.

3. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the College on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors.

a. *Restricted and Unrestricted Gift Transfers.* The Foundation may make restricted donations to the College. Such donated funds will only be expended by the College pursuant to the terms of such restrictions. The Foundation may also make unrestricted donations to the College. Such donated funds will be expended under the oversight of the College President in compliance with state law and College policies. All expenditures notes in this section must comply with the I.R.S. 501(c)(3) code and be consistent with the Foundation's sole mission to support the College.

## 4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions. The Foundation may supplement or change this designation with written notice to the College; provided, however, in no event may the person with Foundation signature authority for financial transactions be a College employee nor a “Loaned Employee” as that term is used in this Agreement.

b. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

5. College Report on Distributed Funds. On a regular basis, which shall not be less than annually, the College shall report to the Foundation on the use of restricted and unrestricted funds transferred to the College. This report shall specify the restrictions on any restricted funds and the uses of such funds.

6. Transfer of College Assets to the Foundation. No College funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

- a. A donor inadvertently directs a contribution to the College that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the College's transfer of such funds to the Foundation.
- b. The College has gift funds that were originally transferred to the College from the Foundation and the College wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
- c. The institution has raised scholarship funds through an institution activity and the institution wishes to deposit the funds with the foundation for investment and distribution consistent with the scholarship nature of the funds.
- d. Transfers of a *de minimis* amount not to exceed \$10,000 from the institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general College support purposes. This exception shall not apply to payments by the institution to the Foundation for obligations of the institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the College such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis. Further, the Foundation shall make data available to external auditors as necessary to complete audit responsibilities.

8. Insurance. To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "C"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the College any updates to such investment policy which updates shall also be attached hereto as Exhibit "C".

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "D" and the Foundation's Amended and Restated Bylaws which are attached as Exhibit "E." The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to both the College and the State Board.

11. Conflicts of Interest and Ethical Conduct. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set forth as Exhibit "E", and the Foundations Code of Ethical Conduct is set forth as Exhibit "F".

## **ARTICLE V**

### **Foundation Relationships with the College**

1. Access to Records. Subject to recognized legal privileges, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.

2. Record Management.

a. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the College shall be limited to the College's President and any designee of the College's President.

b. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.

c. Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of College affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337 – 9-350, except where otherwise required by state and federal law.

3. Name and Marks. Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "Eastern Idaho Technical College" and "Eastern Idaho Technical College Foundation" in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.

4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

5. Establishing the Foundation's Annual Budget. The Foundation shall provide the College with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the College's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer and Assistant Treasurer by March 1 of each year.

6. Attendance of College's President at Foundation's Board of Director Meetings. The College's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.

7. Supplemental Compensation of College Employees. Any supplemental compensation of College employees by the Foundation must be preapproved by the State Board.

Any such supplemental payment or benefits must be paid by the Foundation to the College, and the College shall then pay compensation to the employee in accordance with the College's normal practice. No College employee shall receive any payments or other benefits directly from the Foundation.

## ARTICLE VI

### Audits and Reporting Requirements

1. Fiscal Year. The Foundation and the College shall have the same fiscal year.
2. Annual Audit. On an annual basis, the Foundation shall have an audit conducted by a qualified, independent certified public accountant who is not a director or officer of the Foundation. The annual audit will be provided on a timely basis to the College's President and the Board, in accordance with the Board's schedule for receipt of said annual audit. The Foundation's Annual Statements may be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the College as defined by the Government Accounting Standards Board (GASB). Accordingly, the College is required to include the Foundation in its Financial Statements which follow a GASB format. Therefore, if the Foundation presents its audited Financial Statement under FASB, Schedules reconciling the FASB Statements to GASB standards must be provided in the detail required by GASB Standards. The annual audited Financial Statements and Schedules shall be submitted to the College's fiscal office in sufficient time to incorporate the same into the College's statements.
3. Separate Audit Rights. The College agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the College's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the College and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records.
4. Annual Reports to College President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the College President and the State Board setting forth the following items:
  - a. the annual financial audit report;
  - b. an annual report of Foundation transfers made to the College, summarized by College department;
  - c. an annual report of unrestricted funds received by the Foundation;
  - d. an annual report of unrestricted funds available for use during the current fiscal year;

- e. a list of all of the Foundation's officers, directors, and employees;
- f. a list of College employees for whom the Foundation made payments to the College for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
- g. a list of all state and federal contracts and grants managed by the Foundation;
- h. an annual report of the Foundation's major activities;
- i. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the College; and
- j. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

## ARTICLE VII

### Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest and Code of Ethics and Conduct Policy Statement. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set as Exhibit "F", and its Code of Ethics and Conduct is set forth as Exhibit "G".

2. Dual Representation. Under no circumstances may a College employee represent both the College and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the College and the Foundation. This shall not prohibit College employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of College. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the College without first obtaining the prior written approval of the College and, if applicable under law or policy, the State Board of Education. College approval of any such contract shall comply with policies of the State Board of Education with respect to approval of College contracts.

4. Acquisition or Development of Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the College's use without first obtaining

approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the College shall notify the State Board and where appropriate, the Idaho Legislature, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the College's use shall be a coordinated effort of the College and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

## **ARTICLE VIII**

### **General Terms**

1. Effective Date. This Agreement shall be effective on the date set forth above.
  
2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default. Should the College choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the College to pay, within 180 days of written notice, all debt incurred by the Foundation on the College's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the College that is not cured within the time frame set forth above, the College may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event the parties are unable to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.
  
3. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved to the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.
  
4. Modification. Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.



5. Providing Document to and Obtaining Approval from the College. Unless otherwise indicated herein, any time documents are to be provided to the College or any time the College's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the College's President or an individual to whom such authority has been properly delegated by the College's President.

6. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

7. Notices. Any notices required under this agreement may be mailed or delivered as follows:

To the College:

Burton L. Waite, President  
Eastern Idaho Technical College  
1600 S. 25<sup>th</sup> E.  
Idaho Falls, ID 83404

To the Foundation:

Melissa Bean, Executive Director  
Eastern Idaho Technical College Foundation, Inc.  
1600 S. 25<sup>th</sup> E.  
Idaho Falls, ID 83404

8. No Joint Venture. At all times and for all purposes of this Memorandum of Understanding, the College and the Foundation shall act in an independent capacity and not as an agent or representative of the other party.

9. Liability. The College and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.

10. Indemnification. The College and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This

indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the College's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

11. Dispute Resolution. The parties agree that in the event of any dispute arising from this MOU, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, the dispute will be referred to the Chair of the Foundation and the College President. If the Foundation and College President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this MOU. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

12. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and/or Articles of Incorporation, should the Foundation cease to exist or cease to qualify as an Internal Revenue Code §501(c)(3) organization, the Foundation will transfer its assets and property to the College, to a reincorporated successor Foundation organized to benefit the College, or to the State of Idaho for public purposes, in accordance with Idaho law.

13. Assignment. This Agreement is not assignable by either party, in whole or in part.

14. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

15. Severability. If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

IN WITNESS WHEREOF, the College and the Foundation have executed this agreement on the above specified date.

Eastern Idaho Technical College

By: \_\_\_\_\_  
Its: President

Eastern Idaho Technical College Foundation, Inc.

By: \_\_\_\_\_  
Its: President

**EXHIBIT "A"**

**Loaned Employee Agreement**

## EXHIBIT "A"

**AGREEMENT FOR LOANED EMPLOYEE  
EASTERN IDAHO TECHNICAL COLLEGE-EASTERN IDAHO TECHNICAL  
COLLEGE FOUNDATION, INC.**

THIS AGREEMENT is entered into by and between EASTERN IDAHO TECHNICAL COLLEGE, a state educational institution, and a body politic and corporate organized and existing under the laws of the state of Idaho ("College"), and EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC., a private nonprofit corporation ("Foundation").

**BACKGROUND**

A. The Foundation, incorporated as a 501(c)(3) organization in 1992, raises and manages private funds for the benefit of the College, and

B. The College has agreed to loan its employee, \*\*\*\* ("Loaned Employee"), to the Foundation to act in the capacity of \*\*\*\* for the Foundation.

**AGREEMENT**

The parties agree as follows:

**1. Relationship between Loaned Employee and the College.**

a. Loaned Employee may be an exempt, fiscal year employee of the College subject to all applicable policies and procedures of the Board and the College, or a classified employee subject to the applicable State of Idaho, State Board and/or College rules and procedures.

b. Loaned Employee will be paid at a fiscal year salary rate of \$\*\*\*\*, payable on the regular bi-weekly paydays of the College. Loaned Employee will be entitled to College benefits to the same extent and on the same terms as other full-time College employees of her/his classification.

c. The College shall be responsible for the payment of all salary and benefits to Loaned Employee. The College shall be responsible for all payroll-related taxes, benefits costs, and other related payroll costs arising out of the Loaned Employee's employment with the College.

**2. Relationship between the Foundation and Loaned Employee.**

**a.** Loaned Employee will work full time and shall be under the exclusive supervision, direction and control of the Foundation Board of Directors during the performance of her/his duties under this Agreement. Loaned Employee will report directly to the Foundation Chairman or her/his designee, who shall determine her/his duties. Loaned Employee will be considered a loaned employee under the workers' compensation law of the State of Idaho.

**b.** The Foundation is solely responsible for payment of income, social security, and other employment taxes, if any, due to the proper taxing authorities arising from its payment of reimbursements to Loaned Employee. The Foundation agrees to indemnify, defend, and hold the College harmless from any and all liabilities, losses, claims or judgments relating to the payment of these taxes.

**c.** No later than ninety (90) days prior to the end of the term of this Agreement, and each subsequent term, if any, The Foundation will evaluate the performance of Loaned Employee. In the case where the Loaned Employee is a classified employee, such evaluation shall occur in accordance with rules and procedures applicable to such employees. The Foundation will provide a copy of the evaluation document to the College no later than fourteen (14) days after the evaluation is completed.

**d.** The Foundation may terminate or non-renew Loaned Employee's employment contract, or discipline Loaned Employee in accordance with the Foundation's procedures and applicable law, any such termination or non-renewal shall constitute grounds for termination, non-renewal or discipline of Loaned Employee by the College. Provided however, particularly when the Loaned Employee is a classified employee, any contemplated termination shall be subject to applicable legal and procedural requirements of the State of Idaho and the College.

### **3. Relationship between the Foundation and the College.**

**a.** The College will pay one hundred percent (100%) of the total cost of Loaned Employee's salary and benefits. The Foundation will reimburse the College for costs associated with Loaned Employee's travel approved by the Foundation. Such costs will be billed regularly and paid to the College.

**b.** The College shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, the Foundation shall have the right to inspect and copy said books and records, which the College agrees to retain for a minimum period of one year following the completion of this Agreement.

**c.** The furnishing of Loaned Employee shall not be considered a professional service of the College. At no time during the performance of this Agreement shall the

Loaned Employee receive or act under instructions from the College regarding the work performed on behalf of the Foundation.

**d.** The College shall have no liability to the Foundation for loss or damage growing out of or resulting from the activities of the Loaned Employee. The Foundation therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, the College, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, including but not limited to injuries (including death) to persons and for damages to property (including damage to property of the Foundation or others) arising out of or in connection with the activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

#### **4. General Terms**

**a. Term, Termination.** This Agreement will terminate on the same day as Loaned Employee's contract as an exempt employee of the College terminates, or in the case of classified employees, after applicable rules and procedures have been followed, or upon Employee's resignation or other separation from employment, whichever is earlier. By mutual written consent, in conjunction with any renewal of the Loaned Employee's contract as an exempt employee of the College, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee's renewed contract with the College, or in the case of a classified employee, continued into the next ensuing fiscal year, such that the term of this Agreement shall always be equal to the term of Loaned Employee's status as an exempt or classified employee of the College. The Loaned Employee remains subject to all applicable Board and College policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline for adequate cause, and where applicable, rules and procedures pertaining to classified employees.

**b. Governing Law.** This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Bonneville County.

**c. Notice.** Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

**To Foundation:**

Eastern Idaho Technical College Foundation, Inc. Phone: (208) 524-3000  
Chairman Fax: (208) 524-0429  
1600 S. 25<sup>th</sup> E.  
Idaho Falls, ID 83404

**To the College:**

Eastern Idaho Technical College Phone: (208) 524-3000  
President Fax: (208) 524-0429  
1600 S. 25<sup>th</sup> E.  
Idaho Falls, ID 83404

**To the Loaned Employee:**

\*\*\*\*

**Last address** on file with College's Human Resources

Notice shall be deemed given on its date of mailing, faxing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

**d. Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

**e. Attorney's Fees.** In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

EASTERN IDAHO TECHNICAL COLLEGE

\_\_\_\_\_  
Burton L. Waite, President

Date:\_\_\_\_\_



| EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

\_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

| LOANED EMPLOYEE concurrence and commitment:

\_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "B"**

Service Agreement

**EXHIBIT “B”**

**SERVICES AGREEMENT**

**EASTERN IDAHO TECHNICAL COLLEGE – EASTERN IDAHO TECHNICAL COLLEGE  
FOUNDATION, INC.**

THIS SERVICES AGREEMENT is entered into by and between Eastern Idaho Technical College, a state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho (“College”), and EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC., a private nonprofit corporation (“Foundation”).

- A. The College agrees to provide to the Foundation the following administrative, financial, accounting, and investment support services.
  - 1. Administrative support for reconciliation between appropriate Foundation and College accounts such as scholarship and spendable accounts and appropriate revenue reports between the Foundation and the College, assist with transfer of gift funds to the College, assist with monitoring gift fund use to ensure compliance with wishes of donors, Foundation policies and applicable laws.
  - 2. Administrative support for Foundation gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to the Foundation, assist with receipt of distributions from estates and trusts to the Foundation.
  - 3. Administrative support for the initial receipt and logging of gifts and other Foundation receipts.
- B. All College employees who provide support services to the Foundation shall remain College employees under the direction and control of the College.
- C. The College will supply the facilities, equipment, software and operating supplies necessary for the College employees supplying the above support services to the Foundation, the nature and location of which shall be in the College’s discretion. In addition, the College shall furnish office space and office equipment for use by the “loaned employees”, the nature and location of which shall be subject to agreement of the parties.
- D. The Foundation will reimburse directly to the College amounts for the operating supplies provided to the Foundation pursuant to the Service Agreement.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the College’s fiscal year until terminated by either party. This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective 30 days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Operating Agreement between the College

and the Foundation dated \_\_\_\_\_. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

EASTERN IDAHO TECHNICAL COLLEGE

\_\_\_\_\_  
Burton L. Waite, President

Date:\_\_\_\_\_

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

\_\_\_\_\_  
Foundation Chairman

Date:\_\_\_\_\_

**EXHIBIT "C"**

Investment Policy

**Eastern Idaho Technical College Foundation, Inc.**

**Statement of Investment Policy and Guidelines**

**Approved by the EITC Foundation Board**

September 9, 2008

The following Investment Guidelines have been established by the Eastern Idaho Technical College Foundation, Inc., to provide guidance for the investment and reinvestment of the principal and income from its investment portfolio.

*The purpose of these investment guidelines is to assure that funds be invested in high-quality securities in a manner that provides capital preservation, minimum levels of risk with a reasonable return and necessary liquidity.*

**Investment Objectives**

The long-term objective is a preservation of capital with a maximum total return from income and appreciation. The goal is to achieve a total portfolio return in excess of 8%. Secondly, the total return performance of the fixed income portfolio will attempt to achieve a total return that exceeds an index of like securities. Thirdly, the equity portfolio will attempt to achieve a total return equal to or greater than the total return of the S&P500 for stocks, and the EAFE<sup>i</sup> for international investment.

**Authorities and Responsibilities of the Investment Manager(s)**

Subject to the terms and conditions of this statement, the investment manager(s) shall have the full discretionary power to direct the investment and reinvestment of assets under its management. The EITC Foundation Finance and Investment Committee expects that the investment manager(s) will recommend changes to this statement at any time when the investment manager(s) views any part of this statement to be at variance with overall market and economic conditions. A copy of this investment policy statement shall be provided to any investment manager. For purposes of this paragraph, investment manager does not include a manager of mutual funds.

*Portfolio Guidelines*

1. Investments shall be limited to the following:
  - a. Obligations of the United State Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds.

<sup>i</sup> The **EAFE Stock Index** tracks the Europe, Australasia, and Far East (EAFE) stock index. The EAFE Index is primarily composed of around 20,000 securities from over 20 countries.

- b. Obligations issued by or fully guaranteed to principal and interest by the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer: Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association, Government National Mortgage Association, or the World Bank.
- c. Repurchase agreements with the primary-reporting dealers, acting as principal for securities of the United States Treasury, and only if safekeeping receipt of a correspondent banking institution supports the securities. The value of the security shall always equal or exceed the repurchase price. Master Repurchase Agreement facilities, which are supported by a third party custodian. Collateral relationships are approved.
- d. Zero coupon “stripped securities” when the securities otherwise meet the requirements of these investment guidelines.
- e. Negotiable or non-negotiable certificates of deposit in amounts not to exceed \$100,000 principal plus interest unless the certificates of deposits are fully collateralized with obligations of the United States Treasury.
- f. Banker’s acceptances that are eligible for discount at a Federal Reserve Bank.
- g. Money Market Funds, but only if the underlying securities and obligations conform to the restrictions of the investment guidelines.
- h. Direct investment in commercial paper, which is rated at least P-1 by Moody’s Investor Services or A-1 by Standard and Poors, Inc.
- i. Corporate debt obligations which are rated a least A by either Moody’s Investor Services or Standard and Poors, Inc., at the time of purchase. Downgrades will be discussed with the EITC Foundation Finance and Investment Committee.
- j. The investment manager(s) may invest in mutual funds or pooled savings accounts for which the investment manager(s) or its affiliate acts as investment advisor, manager, or sponsor, as designated by the Principal, if the underlying securities and obligations conform to the restrictions of these investment guidelines.
- k. Equity securities, which are listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ. Equity securities may be purchased through pooled funds or as individual issues.

To assure capital preservation, the following diversification guidelines shall apply to the total holdings under the investment management accounts.

Asset Class	Preferred
-------------	-----------

<b>Equities</b>	<b>45 - 55%</b>
<b>Fixed Income</b>	<b>35 – 45%</b>
<b>Cash &amp; Equivalents</b>	<b>0 - 10%</b>

The asset allocation will be reviewed every six months to take into consideration market conditions.

2. Other Restrictions. The investment manager(s) shall not utilize managed assets to:

- a. Make loans, unless otherwise provided in these investment guidelines.
- b. Borrow money or pledge or mortgage managed assets.
- c. Purchase securities on margins or make short sales.
- d. Purchase restricted securities.
- e. Write, purchase or sell puts, calls, warrants, or options.
- f. Hedges or derivatives.

### **Meetings of the Finance and Investment Committee**

The Finance and Investment Committee shall review the portfolio's investment results at least semi-annually, and shall report its conclusions, either orally or in writing, to the EITC Foundation (EITCF) Board of Directors promptly. Written reports from all brokerage firms and investment managers shall be provided to the EITCF at least quarterly.

### **Performance Evaluation**

The Finance and Investment Committee will monitor the portfolio's performance as described above, and will evaluate the overall success of the investment objectives outlined in this document over a three year moving average of the fund value based on the valuations of the account on June 30 of each of the previous three years. The annual grant allocation shall be at a rate of at least 5%. Allocations of additional amounts will be made on the basis of fund performance on the recommendation of the Finance Committee. The portfolio asset allocation between equity, fixed income and cash should also be reported on at least a semi-annual basis.

### **Delegation of Authority,**

The EITC Foundation Board of Directors is a fiduciary, and the Finance and Investment Committee is responsible for directing and monitoring the investment management of EITCF assets. As such, the Finance and Investment Committee shall recommend that the



Board delegate certain responsibilities to professional experts in various fields. These include, but are not limited to:

1. Investment Management Consultant. The consultant may assist the Finance and Investment Committee in: establishing investment policy, objectives, and guidelines; selecting investment managers; reviewing such managers over time; measuring and evaluating investment performance; and other tasks as deemed appropriate.
2. Investment Manager. In the absence of direction from the Finance and Investment Committee the investment manager(s) has discretion to purchase, sell, or hold the specific securities that will be used to meet EITCF investment objectives.
3. Custodian. The custodian will physically (or through agreement with a sub-custodian) maintain possession of securities owned by EITCF, collect dividend and interest payments, redeem maturing securities, and effect receipt and delivery following purchases and sales. The custodian may also perform regular accounting of all assets owned, purchased, or sold, as well as movement of assets into and out EITCF accounts.
4. Co-Trustee. The Finance and Investment Committee may ask the EITCF Board of Directors to appoint an outside individual or entity, such as a bank trust department to be co-trustee. The co-trustee will assume fiduciary responsibility for the administration of EITCF assets.
5. Additional specialists such as attorneys, auditors, actuaries, retirement plan consultants and others may be employed by EITCF Board of Directors to assist in meeting its responsibilities and obligations to administer EITCF assets in a prudent manner.

The Finance and Investment Committee will not reserve any control over investment decisions, with the exception of specific limitations described in these statements. Investment managers will be held responsible and accountable to achieve the objectives herein stated. While it is not believed that the limitations will hamper investment managers, each manager should request modifications which they deem appropriate.

If such experts employed are also deemed to be fiduciaries, they must acknowledge such in writing. All expenses for such experts must be customary and reasonable, and will be borne by EITCF as deemed appropriate and necessary.

#### **Responsibility of the Investment Consultant(s)**

The Investment Consultant's role, if one is assigned, is that of a non-discretionary advisor to the Finance and Investment Committee of EITCF. Investment advice concerning the investment management of EITCF assets will be offered by the Investment Consultant, and will be consistent with the investment objectives, policies, guidelines and constraints as established in this statement. Specific responsibilities of the investment Consultant include:

1. Assisting in the development and periodic review of investment policy.

- [2.](#) Conducting investment manager searches when requested by the Finance and Investment Committee.
- [3.](#) Providing “due diligence”, or research, on the Investment Manager(s).
- [4.](#) Monitoring the performance of the Investment Manager(s) to provide the Finance and Investment Committee with the ability to determine progress toward the investment objectives.
- [5.](#) Communicating matters of policy, manager research, and manager performance to the Finance and Investment Committee.
- ~~[4.6.](#)~~ Reviewing EITCF investment history, historical capital markets performance and the contents of this investment policy statement to any newly appointed members of the Finance and Investment Committee.

### **Liquidity**

To minimize the possibility of a loss occasioned by the sale of a security forced by the need to meet a required payment, the Finance and Investment Committee will periodically provide investment manager(s) with an estimate of expected net cash flow. The Finance and Investment Committee will notify the investment manager(s) in a timely manner, to allow sufficient time to build up necessary liquid reserves.

To maintain the ability to deal with unplanned cash requirements that might arise, the Finance and Investment Committee requires that a minimum of 0-10% of EITCF assets shall be maintained in cash or cash equivalents, including money market funds or short-term U.S. Treasury bills.

### **Diversification for Investment Managers**

The Finance and Investment Committee does not believe it is necessary or desirable that securities held by EITCF represent a cross section of the economy. However, in order to achieve a prudent level of portfolio diversification, the securities of any one company or government agency should not exceed 10% of the total fund, and no more than 30% of the total fund should be invested in any one industry. Individual treasury securities may represent 40% of the total fund, while the total allocation to treasury bonds and notes may represent up to 100% of EITCF aggregate bond position.

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Submitted, Chair, EITC Foundation  
Finance and Investment Committee

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Approved, Chair EITC Foundation

**EXHIBIT "D"**

Articles of Incorporation

94861

**Department of State.****CERTIFICATE OF INCORPORATION  
OF**COLLEGE OF EASTERN IDAHO FOUNDATION, INC.

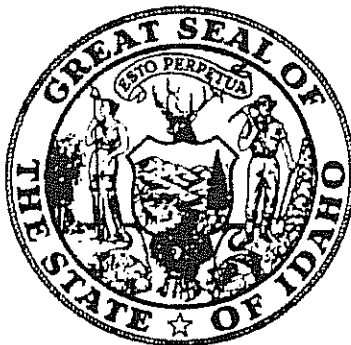
I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that  
duplicate originals of Articles of Incorporation for the incorporation of \_\_\_\_\_

COLLEGE OF EASTERN IDAHO FOUNDATION, INC.

duly signed pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received  
in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of  
Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated March 27, 1991



SECRETARY OF STATE

\_\_\_\_\_  
Corporation Clerk

RECEIVED  
SEC. OF STATE  
ARTICLES OF INCORPORATION  
OF '91 MAR 27 AM 8 44  
COLLEGE OF EASTERN IDAHO FOUNDATION, INC.

The undersigned, acting as incorporator of a non-profit corporation under the Idaho Non-Profit Corporation Act, adopt the following Articles of Incorporation for this non-profit corporation:

ARTICLE I

The name of this non-profit corporation shall be: College of Eastern Idaho Foundation, Inc.

ARTICLE II

The period of existence of this corporation shall be perpetual.

ARTICLE III

The address of the initial registered office of this corporation is: College of Eastern Idaho, c/o Dale W. Storer, P. O. Box 51630, 490 Memorial Drive, Idaho Falls, Idaho 83405-1630, and the name of the initial registered agent at such address is Dale W. Storer.

ARTICLE IV

The purpose of this corporation shall be to engage in non-profit activities for the establishment, development and improvement of the College of Eastern Idaho, including but

not limited to soliciting and receiving gifts, bequests and devises; to hold, use and manage monies and property, real and personal, of whatsoever kind or nature, exclusively for the benefit of the College of Eastern Idaho, its various vocational, technical and educational programs and its various services; to promote excellence, and to provide scholarships, grants-in-aid, loans and other financial assistance to students enrolled in the College of Eastern Idaho and any other purpose authorized for non-profit corporations by the Idaho Code, subject to the limitations set forth below. This corporation is organized exclusively for charitable and educational purposes.

## ARTICLE V

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IV hereof. This corporation shall not substantially engage in disseminating propaganda or otherwise in attempting to influence legislation, nor shall it participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding the other

provisions of these Articles, this corporation shall not engage in any activities forbidden to be carried on (a) by a corporation exempt from the federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law) or (b) by a corporation to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United states Internal revenue law).

Upon the dissolution of this corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of this corporation, dispose of all of the assets of the corporation exclusively for the purposes set forth in these Articles or by distributing the assets to any organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes who shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United states Internal Revenue law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the District Court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such



organization or organizations, as the court shall determine, which are organized and operated exclusively for such purposes.

The corporation will distribute its income for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or corresponding section of any future federal tax code. The corporation will not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code, or corresponding section of any future federal tax code. The corporation will not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code, or corresponding section of any future federal tax code. The corporation will not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code, or corresponding section of any future federal tax code. The corporation will not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code, or corresponding section of any future federal tax code.

#### ARTICLE VI

The corporation members shall consist of the Board of Directors, and such other persons selected for membership by the Board of Directors.

#### ARTICLE VII

Without limiting the general powers granted to this corporation by Idaho law, or infringing upon the powers

reserved to the Board of Trustees of the College of Eastern Idaho, the corporation shall have the following specific powers:

1. To administer any gifts, devises or like in accordance with the directions of various donors and testators and within the authority of this corporation.

2. To receive, acquire, hold, purchase, dispose of, convey, mortgage, lease and improve real and personal property; to sell, lease, assign, transfer, mortgage and convey any rights, privileges, franchise, real or personal property of the corporation, other than its franchise of being a corporation, and to purchase, guaranty, take, receive, subscribe for or otherwise acquire, or otherwise dispose of and otherwise use and deal in and with, shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.

3. To serve as agent for College of Eastern Idaho in the management and investment of property of any and all kinds heretofore acquired by said college which the Board of Trustees of such college district shall

determine to transfer to the corporation for such management and investment.

4. To determine, by a vote of at least two-thirds of the members of the corporation (1) that the purposes of any grant, gift, donation or devise have become unnecessary, undesirable, impractical, impracticable or impossible of fulfillment, or (2) that any beneficiary to which the income or principle of any gift is to be paid has become non-existent or has ceased its activities, or (3) that, for any reason, the applications provided by ant donor or testator have become impossible, impractical, unnecessary or undesirable. Upon such determinations, the corporation may apply the gift or devise to the general purposes of the corporation as hereinabove set forth.

5. To receive grants from the United States government or any other public or private corporation or entity, and to disburse such grants for the support of scientific, educational and research activities.

6. To make applications for and obtain patents, patent rights, and copyrights, for any inventions or publications and to hold and license patents and copyrights, provided, however, that all income from such patents or copyrights shall be devoted to the scientific,

charitable and educational purposes of the corporation and none of such income shall accrue to any officer, director or employee of the corporation except for remuneration for services or except as an inventor or author of a project.

7. To have and exercise all powers now or hereafter conferred upon non-profit corporations by the laws of the State of Idaho, subject to the provisions of these Articles and its Bylaws duly and regularly adopted, and to the powers reserved to the Board of Trustees of the College of Eastern Idaho.

8. Notwithstanding any other provisions of these Articles, the corporation shall not carry on, other than as an insubstantial part of its activities, any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Revenue law) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law).

9. To defend any lawsuit filed against the corporation, and to initiate and carry on any legal suits necessary for the benefit of the corporation.

#### ARTICLE VIII

The corporation shall be initially governed by an interim Board of Directors who shall serve until the College of Eastern Idaho is established pursuant to Title Thirty Three, Chapter Twenty-one, Idaho Code, and a President of the College of Eastern Idaho is appointed. Such interim Board of Directors shall consist of no less than five (5) nor more than twenty-five (25) persons, residing within the Community College Area No. VI, as established by Idaho Code, Section 33-2101. Such interim Directors shall be appointed by the Mayor of the City of Idaho Falls, the incorporator herein and two members of the Mayor's Community College Committee chosen by the Mayor and the incorporator. Upon the establishment of the College of Eastern Idaho and appointment of its President, the interim Board of Directors shall appoint a permanent Board of Directors consisting of no less than five (5) and no more than thirty (30) persons including the following:

1. One (1) member elected biennially by the Board of Trustees of the College of Eastern Idaho, who shall be a trustee.

2. The President of the College of Eastern Idaho.

3. The Director of Development of the College of Eastern Idaho

4. Six (6) members at large shall be chosen from Idaho's Community College Area Number VI comprising the counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton and that portion of Bingham County not included in Area Number V. At least three (3) of such members shall reside within Bonneville County.

5. All other members at large from within or without the State of Idaho.

#### ARTICLE IX

The affairs of the corporation shall be managed by the Board of Directors. Bylaws of the corporation shall be adopted at the first organizational meeting of the interim Board of Directors. Successor directors shall be elected by a majority vote of a quorum of the Board. The number, terms and manner of election of the successor directors shall be as provided in the Bylaws of the corporation subject to these Articles of Incorporation.

The termination of the term of board members for any reason other than expiration of a regular term, resignation or death, shall be by an expulsion vote of a two-thirds majority of the remaining members.

Vacancies other than by expiration of the regular term of office, shall be filled or left vacant by an affirmative vote of a majority of a quorum of the Board of Directors, but not less than (3) affirmative votes, as soon as possible after such termination of a membership and not later than the next regular meeting of the Board of Directors.

One half of said Board of Directors shall constitute a quorum, and a majority of any such quorum at a meeting duly convened shall have the power to act, except as these Articles otherwise specifically provide. Action of any kind may also be taken, without a meeting, by written resolution, setting forth the action, signed by all of the members. Each member shall be entitled to one vote and shall have the right to vote on all matters.

The Board of Directors may delegate to officers and committees powers to manage the affairs of the corporation, as may be provided in the Bylaws.

#### ARTICLE X

The annual meeting of the corporation shall be at such place and time as the President of the Foundation may notice; provided, however, the annual meeting shall be held not less than eight (8) nor more than sixteen (16) months from the time of the preceding annual meeting and, provided further the President of the Foundation or not less than eight (8) members of the Board of Directors may notice any special meeting.

Notice of any meeting shall be in writing sent not less than three (3) days before the meeting, if by telegram or telefax, or not less than ten (10) days if by mail, postage prepaid, certified mail, return receipt requested, addressed to the last known address of the Director to whom it is sent. Notice may be waived either before or after a meeting.

## ARTICLE XI

The name and addresse of the incorporator of the corporation is:

Mr. Dale W. Storer  
P. O. Box 51630  
Idaho Falls, Idaho 83405-1630

## ARTICLE XII

The names and addresses of the initial Board of Directors are:

Mr. Charles Rice  
355 West 14th Street  
Idaho Falls, Idaho 83402

Mr. Dale W. Storer  
P. O. Box 51630  
Idaho Falls, Idaho 83405-1630

Mr. John St. Clair  
P.O. Box 51718  
Idaho Falls, Idaho 83405-1718

Mr. Don Ofte  
2910 Sunnybrook Lane  
Idaho Falls, Idaho 83404

Mr. Frank Meikle  
500 North Capital Avenue  
Idaho Falls, Idaho 83402

## ARTICLE XIII

All or any meetings of the members, or of the Board of Directors shall be held within the State of Idaho.



ARTICLE XIV

The Directors of this corporation shall not be personally liable for the debts, liabilities or obligations of this corporation.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 25<sup>th</sup> day of March, 1991.

  
Dale W. Storer

AA097/DWSD

**EXHIBIT "E"**

Amended and Restated Bylaws

**BYLAWS**

**EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.**

Amended and Restated, June 2008

**ARTICLE ONE  
NAME**

The name of the corporation is EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

**ARTICLE TWO  
PRINCIPAL OFFICES**

The principal offices of the Foundation shall be maintained at Eastern Idaho Technical College, 1600 South 25<sup>th</sup> East, Idaho Falls, Idaho 83404-5788.

**ARTICLE THREE  
PURPOSES**

- A. To engage in nonprofit activities for the benefit of Eastern Idaho Technical College, including but not limited to, soliciting, receiving, and disbursing gifts, bequests, and devises to promote excellence in education and related activities, to provide scholarships, grants-in-aid, loans, and other financial assistance to students enrolled at Eastern Idaho Technical college and transacting any other business or performing any other activities authorized by Idaho law consistent with section 501(c)(3) of the Internal Revenue Code.
- B. To administer any gifts, devises, or like in accordance with the directions of donors, testators, or other benefactors.
- C. To receive, acquire, hold purchase, dispose of, convey, mortgage, lease, and improve real and personal property; to sell, lease, assign, transfer, mortgage, and convey any rights, privileges, franchise, real or personal property of the Foundation, other than its franchise of being a corporation; and to purchase, guaranty, take, receive, subscribe for or otherwise acquire or otherwise dispose of and otherwise use and deal in and with, shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, or individuals; or direct or indirect obligations of the United States or any government, state, territory, government district or municipality, or any instrumentality thereof.

- D. The Foundation shall at all times comply with the intermediate sanction rules and regulations of the Internal Revenue Code in regard to transactions between the Foundation and disqualified persons, as set forth in detail at Article 8.
- E. To serve as agent for Eastern Idaho Technical College in the management and investment of property acquired for Eastern Idaho Technical College, as the governing board of the college shall determine to transfer to the Foundation for such management and investment. Nothing in this paragraph is intended to interfere with or usurp the power of the State Board of Education relating to real property of Eastern Idaho Technical College.
- F. To determine, by a vote of at least two-thirds of the directors of the Foundation:
  - 1. that the purposes of any grant, gift, donation, or devise have become unnecessary, undesirable, impractical, impossible of fulfillment or
  - 2. that any beneficiary to which the income or principal of any gift is to be paid has become non-existent or has ceased its activities, or
  - 3. that, for any reason, the applications provided by any donor have become impossible, impractical, unnecessary, or undesirable.

Upon such determinations, the Foundation may apply the gift or devise to the general purposes of the Foundation.

- G. To receive grants from the United States government or any other public or private corporation or entity, and to disburse such grants for the support of scientific, educational, and research activities.
- H. To make applications for and obtain patents, patent rights, trademarks and copyrights, for any inventions or publications and to hold them, provided, however that all income from assets of this kind shall be devoted to the scientific, charitable, and educational purposes of the Foundation and none of such income shall accrue to any officer, director, or employee of the Foundation except for payment for services or compensation as an inventor or author of a project.
- I. To have and exercise all powers now or hereafter conferred on nonprofit corporations by the laws of the state of Idaho, subject to the provisions of the articles of incorporation and these bylaws duly and regularly adopted, and to the powers reserved to the governing board of the Eastern Idaho Technical College.
- J. Notwithstanding any other provisions of the articles of incorporation, the Foundation shall not carry on, other than as an insubstantial part of its activities, any activities not permitted to be carried on;

1. by corporations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law) or
  2. by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law).
- K. To defend any action filed against the Foundation, or any director carrying out duly authorized and sanctioned activities solely for the benefit of the Foundation, and to initiate and carry on any legal actions necessary for the benefit of the Foundation.

#### **ARTICLE FOUR**

##### **RESTRICTIONS ON EARNINGS**

No part of the net earning of the Foundation shall inure to the benefit of or be distributable to its directors, trustees, officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the articles of incorporation. The Foundation shall not substantially engage in disseminating propaganda or otherwise in attempting to influence legislation, nor shall it participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding the other provisions of the articles of incorporation or these bylaws, the Foundation shall not engage in any activities forbidden to be carried on:

- A. by corporations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law) or
- B. by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law).

On the dissolution of the Foundation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the Foundation, dispose of all the assets of the Foundation exclusively for the purposes set forth in these articles or by distributing the assets to Eastern Idaho Technical College or its successor institution, and if there is none to any organization or organizations organized as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of the United States (or corresponding provisions of any future United States internal revenue law), as the board of directors shall determine. Any such assets not so disposed of shall be disposed of by the district court of the county in which the principal office of the

Foundation is then located, exclusively for such purposes or to such organization or organizations, as the court shall determine, which are organized and operated exclusively for such purposes.

The Foundation will distribute its income for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or corresponding section of any future Federal tax code. The Foundation will not engage in any act of self-dealing as defined in section 494(d) of the Internal Revenue Code, or corresponding section of any future Federal tax code. The Foundation will not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code, or corresponding section of any future Federal tax code. The Foundation will not make any investments in such manner as to subject it to tax under section 4944 of the Internal Revenue Code, or corresponding section of any future Federal tax code. The Foundation will not make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code, or corresponding section of any future Federal tax code.

## **ARTICLE FIVE**

### **MEMBERS/DIRECTORS**

The members of the Foundation are its Board of Directors. The Foundation shall be governed by a Board of Directors consisting of not fewer than five persons. The Board of Directors may determine the upper limit on the number of directors and may adjust the limit provided, however, no director may be removed from office by reduction in board size without the directors express consent. At least one more than a majority of the Board of Directors shall reside within Bonneville County.

The following persons shall be ex-officio Directors;

- A. The President of Eastern Idaho Technical College.
- B. A member of the Advisory Council of Eastern Idaho Technical College selected by that Advisory Council.
- C. The Executive Director of the Eastern Idaho Technical College Foundation

## **ARTICLE SIX**

### **VOTING**

Each Director shall have one vote at all meetings of the Board of Directors of the Foundation. Ex-officio Directors may provide consultation and advice to the board and may otherwise participate in all discussions at such meetings. Ex-officio members shall not have a vote.

**ARTICLE SEVEN  
ELECTION OF DIRECTORS**

The Board of Directors may, from time to time, set the maximum number of Directors the Foundation shall have. No reduction in the size of the Board of Directors will operate to involuntarily reduce the term of office of any Director. The Board of Directors will select Directors to fill the board, to replace Directors whose terms have expired and to fill the terms of office of Directors who resign or are unable to complete the term of office the Director was elected to serve. Directors (of any category) may be elected at any regular or special meeting in a manner prescribed by these bylaws and resolution of the Board of Directors.

**ARTICLE EIGHT  
CONFLICTS OF INTEREST**

- A. The Foundation shall at all times comply with the intermediate sanction rules and regulations of the Internal Revenue Code in regard to transactions between the Foundation and disqualified persons. All such transactions shall be for fair consideration, shall be fully disclosed to the Foundation's board of directors. Such transaction shall only be authorized if approved by the Board of Directors, acting with complete and relevant comparable information with regard to the subject matter, and shall be considered and approved without the participation or control over the disqualified person. Complete and accurate minutes shall be kept for all meetings in which such matter is considered.
- B. The following principles also apply:
1. A conflict of interest transaction is a transaction with the Foundation in which a director of the Foundation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subparagraph 2 of this paragraph.
  2. A transaction in which a director of the Foundation has a conflict of interest may be approved if the material facts of the transaction and the director's interest are disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved or ratified the transaction
  3. For purposes of this section, a director of the Foundation has an indirect interest in a transaction if: (a) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or (b) Another entity of which the director is a director, officer or trustee is a party to the transaction.

4. For purposes of subparagraph 2 of this paragraph, a conflict of interest transaction is authorized, approved or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee, who have no direct or indirect interest in the transaction. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subparagraph 2 of this paragraph if the transaction is otherwise approved as provided in subparagraph 2 of this paragraph.

## **ARTICLE NINE TERMS OF OFFICE**

- A. Active directors shall serve terms of three (3) years. One third of the initial board shall initially be elected for two (2), three (3), or four (4) year terms so as to stagger the expiration of offices. No director may serve more that two full three year terms in succession. After being off the board for a minimum of one (1) year a director may again be eligible for service with the same restrictions. Notwithstanding the foregoing, by a vote of three-fourths of the full Board of Directors, the term of a director may be extended for a specific period of time as determined by the nominating committee.
- B. A Director may be removed for cause, after notice and hearing before the Board of Directors, on the vote of three-fourths of the board present at a regular or special board meeting.
- C. Failure to attend at least three consecutive board meetings will constitute the members resignation from the board, unless the Director has been excused by the Chairperson of the Board or his/her designee.

## **ARTICLE TEN MEETINGS**

- A. The annual meeting of the Board of Directors shall be held in November of each year, the day, hour, and place to be determined by the Chairperson of the Board of Directors of the Foundation. Officers and members of any committee established by these bylaws, or by resolution of the Board of Directors, shall be elected at the annual meeting and such other business as may be brought before the meeting may be transacted. Officers and committee members shall be elected for one year terms and shall assume the office or function at the conclusion of the annual meeting of their election.
- B. Special meetings of the Board of Directors may be held at any time and place designated by the Chairperson of the Board of Directors of the Foundation.



- C. One-half of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors, and all questions shall be determined by a majority vote of the quorum unless provided otherwise in the articles of incorporation, these bylaws, or by resolution of the Board of Directors.
- D. Notice of each meeting, annual or special, shall be mailed by the secretary, or his/her designee, to each of the Directors or not less than ten (10) days preceding any such meeting. In the event the notice is of a special meeting, such notice shall indicate briefly the objectives of the meeting. The Directors may waive notice, in writing, of any such meeting, and if unanimous, such action shall be as effective and have the same force and effect as though all Directors have received notice in accordance with these bylaws. The Directors may set the time and place of meetings of the Board of Directors by resolution, in which case no notice of any such meeting shall be required.

**ARTICLE ELEVEN  
OFFICERS**

- A. The Board of Directors shall elect from its number, a Chairperson of the Board, Vice-Chairperson, Secretary, and Treasurer. The board may elect such assistant officers or other officers it decides necessary to carry out the business of the Foundation. The office of Secretary and Treasurer may be combined and held by one person.
- B. The terms of office shall run for one (1) year. Any officer may be elected to consecutive terms in office.
- C. The Chairperson of the Board shall be the presiding officer, but in the Chairperson of the Board's absence, the Vice-Chairperson of the Foundation shall act as Chairperson. In the absence of both of the last mentioned officers from any such meeting, the board may appoint any member to act as Chairperson. The Executive Director of the Foundation or designee shall act as secretary of all meetings of the Board of Directors. In the event of the absence of the Executive Director at any such meeting, the presiding officer may appoint any person to act as secretary of the meeting. The Treasurer shall act as the custodian of financial records and the financial officer of the Foundation. The officers shall perform the traditional tasks assigned to those offices and such other duties as may be assigned by the Chairperson of the Board of Directors.

**ARTICLE TWELVE  
EXECUTIVE COMMITTEE**

- A. The Executive Committee of the Board of Directors shall consist of the following:

1. All current officers of the Foundation, and
  2. Two other Directors elected by the Board of Directors at the annual meeting.
- B. The following who shall be ex-officio members of the Executive Committee with seat and voice on the committee but no vote:
1. The President of Eastern Idaho Technical College,
  2. The Executive Director of the Foundation, and
  3. The board member representing the Advisory Council of Eastern Idaho Technical College Advisory Council.
- C. The presence of at least one-half of the voting members of the committee shall constitute a quorum. The affirmative vote of a majority of the voting directors of the committee shall be necessary for the adoption of any resolution.
- D. The Executive Committee shall meet at the call of the Chairperson of the Board of the Foundation and minutes shall be reported to the next meeting of the Board of Directors for approval.
- E. The presence of at least one-half of the members shall constitute a quorum of the committee. The affirmative vote of a majority of the quorum shall be necessary for the adoption of any resolution.
- F. The executive committee shall have no authority to alter, amend, or repeal the articles or incorporation or bylaws, or to elect directors.

**ARTICLE THIRTEEN**  
**THE FINANCE COMMITTEE**

- A. The Finance Committee of the Board of Directors shall consist of the following:
1. Chairperson of the Finance Committee, who shall be appointed by the Chairperson of the Board,
  2. Current Chairperson of the Board of the Foundation,
  3. Immediate Past Chairperson of the Board of Directors of the Foundation,
  4. The Secretary-Treasurer of the Foundation,

5. Two (2) Members-at-Large appointed by the Board of Directors of the Foundation,
  6. The Executive Director of the Foundation (ex-officio non-voting), and
  7. Portfolio Manager (ex-officio non-voting).
- B. The Finance Committee shall serve as Investment Advisors. The finance committee will develop an investment policy for a full Board approval, a plan and strategy to meet the objectives and criteria of that policy. The advisors will review and analyze portfolio assets, monitor performance, construct and maintain appropriate asset allocations and report performance to the Board of Directors of the Foundation.
- C. The Finance Committee shall solicit and evaluate written proposals for financial services, and subsequently make a recommendation to the Board of Directors for the hiring of financial portfolio manager(s). The Finance Committee shall conduct oversight of the financial portfolio management and keep the Foundation Board of Directors informed.
- D. The Finance Committee shall be convened at least quarterly and at the call of the Chairman of the Finance Committee. Minutes shall be kept by the Executive Director, or other designee, and filed in the Foundation minute book. The Finance Committee shall report such investment activity to the Board of Directors at the next regularly scheduled meeting.
- E. The presence of a majority of the voting members shall constitute a quorum of the committee. The affirmative vote of at least three-fourths of the members present shall be necessary for the adoption of any resolution..

**ARTICLE FOURTEEN**  
**THE FUND RAISING COMMITTEE**

The Foundation Board of Directors shall serve as a committee of the whole for fund raising.

**ARTICLE FIFTEEN**  
**COLLEGE AND COMMUNITY ALLIANCE COMMITTEE**

This committee shall be responsible for, and its duties will encompass, all aspects of community/college dialogue. The purpose of this committee is to broaden and nurture the visibility and integrity of the college with the various communities in the area. The committee shall encourage the college administration to strive to stay in tune with the needs of the people of the college area. The size of the committee shall be determined by,

and the members of the community appointed by, the Chairperson of the Board of Directors.

**ARTICLE SIXTEEN**  
**OTHER STANDING COMMITTEES**

The Foundation should regularly form and staff scholarship and grants, nominating, public relations, donor relations, gifts, and bequests committees. The Foundation may appoint other committees when needed. The duties and functions of such committees shall be determined by the Board of Directors. The Board of Directors shall determine, by resolution, the size of each committee and manner of selection of the members.

**ARTICLE SEVENTEEN**  
**NOMINATING COMMITTEE**

The nominating committee shall be responsible for, and its duties shall encompass, the nomination of officers for the Eastern Idaho Technical College Foundation Board of Directors and the nomination of individuals for directors of the Foundation Board on an annual basis. In addition, the nominating committee shall nominate individuals to fill director vacancies in a timely manner as the need arises. The committee shall analyze the expertise needed by the Foundation Board and make every effort to find qualified individuals to meet board needs. The committee shall consist of five members including the Chairman of the Board and the Executive Director of the Foundation. The Chairman of the Board shall appoint the additional members. The Executive Director does not have a vote on any matters presented to the nominating committee.

**ARTICLE EIGHTEEN**  
**AMENDMENT**

These bylaws may be amended by a vote of two-thirds of the directors present at an annual meeting or at a special meeting of the Board of Directors if the amendment of the bylaws is the subject of the notice of the meeting.

**ARTICLE NINETEEN**  
**FISCAL YEAR**

The Foundation's fiscal year shall end June 30.

Adopted by the Board of Directors on June 10, 2008.

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**EXHIBIT "F"**

**Conflict of Interest Policy**



**EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION**

**FINANCE AND INVESTMENT**

**COMMITTEE**

**STATEMENT OF  
OPERATING POLICIES**

**July 2008**

("Master Copy" retained by Executive Director, EITC Foundation)



## **EITC Foundation**

### **Finance and Investment Committee**

#### **Operating Policies**

##### **Background**

The Eastern Idaho Technical College (EITC) Foundation Finance and Investment Committee ("Committee") was established by the Foundation Board ("Board") to oversee the management of Foundation assets and investments. Committee Members are appointed by the Board and serve at the pleasure of the Board. The Committee operates in accordance with the EITC Foundation's bylaws and within the framework of the EITC Foundation Investment Policy.

##### **Overall Purpose of Document**

The purpose of these Operating Policies are to summarize specific responsibilities delegated to the Committee, formalize general rules of conduct, provide guidelines for policy implementation, and describe the extent of any limitations on the direction given to those responsible for the investment of funds. The Operating Policies serve to communicate the Committee's expectations and other relevant information to those responsible for the investment of funds and/or those responsible for providing support to the Committee. This document may be amended at any time by a majority vote of the Committee, provided that any amendment is consistent with delegations authorized by the Board and the Foundation Investment Policy.

##### **Organization**

The Committee shall have all powers necessary to carry out its responsibilities. The Committee has the power and authority to delegate responsibilities among its members. The Committee may also designate certain of its members or others (Designated Persons) as authorized to execute any documents on behalf of the Committee, in which event the Committee shall notify the Chair and Treasurer of the EITC Foundation of such action and the name or names of such Designated Persons (Attachment A). Any other party dealing with the Committee may accept and rely upon any document executed by such Designated Persons as representing action by the Committee until the Committee revokes such authorization in writing.

Each Committee member will be fully indemnified and held harmless by the EITC Foundation under which there is incurred cost or liability for conduct in good faith of duties as a member of the Committee.

##### **Operating Policies**

The Committee (individually and collectively) shall:

1. Maintain an awareness of the status of EITC Foundation investments;



2. Establish, maintain and periodically review investment policies, monitoring guidelines and performance measurement criteria;
3. Invest EITC Foundation assets for the exclusive purpose of providing benefits to serve the EITC Foundation's purpose and for defraying reasonable operational and administrative expenses; and
4. The Committee, individually and collectively, shall not engage in individual investment selection as a general course of operations (individual investment selection will generally be delegated to investment advisors/managers, but exceptions may be appropriate for particular strategic decisions).

### **Committee Responsibilities**

As outlined by the EITC Foundation bylaws and Investment Policy, the primary functions and responsibilities of the Committee shall relate to the investment and management of the EITC Foundation's assets. These responsibilities, as delegated by the Board, include but are not limited to the following areas:

1. Appoint and/or direct advisors, custodians, and investment managers to be responsible for the management and investment of the Foundation's assets and for establishing and communicating standards and criteria against which to monitor and evaluate their performance;
2. Appoint other parties to advise or assist the Committee in the performance of its responsibilities;
3. Execute investment manager agreements, investment advisor agreements, investment agreements, and all investment related agreements by the Committee, on behalf of the EITC Foundation;
4. Establish and maintain overall investment objectives and investment policies for the EITC Foundation through the adoption of a separate investment policy statement;
5. Select investments for the EITC Foundation's assets and monitoring their performance;
6. Review cash flow used to anticipate future funding requirements for scholarship and administrative expenses;
7. Recommend to the EITC Foundation Board future Committee members;
8. Provide periodic reports to the Board regarding the status of the EITC Foundation assets, investment managers and other parties engaged to provide services to the Foundation, investment performance, and funding requirements;
9. Attend meetings of the Committee;



10. Perform all other duties as delegated by the Board to the Committee, and
11. Review investment costs for appropriateness and reasonableness.

The Committee shall perform its responsibilities in accordance with, (i) its duty to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and, (ii) its duty to diversify the investments of the EITC Foundation to minimize the risk of large losses.

### **Investment Responsibilities**

Committee decisions shall give appropriate consideration to those facts and circumstances that given the scope of its investment duties, the Committee knows are relevant to the particular investment or investment course of action involved, including the role of the investment or investment course of action plays in that portion of the EITC Foundation's investment portfolios.

With respect to overseeing investment activities the Committee shall:

1. Establish objectives and strategies for investment in relation to the respective purposes of the EITC Foundation;
2. Establish and maintain investment policies and guidelines consistent with objectives for the portfolios;
3. Establish the appropriate risk profile for the overall securities portfolio;
4. Allocate assets, including establishing target allocations among the various classes of assets consistent with the EITC Foundation Investment Policy;
5. Determine appropriate investment styles to employ to accomplish the desired risk/return objectives;
6. Establish appropriate benchmarks related to asset allocations and investment styles;
7. Select investment manager(s) and/or advisor(s);
8. Monitor performance of investment manager(s) and/or advisor(s);
9. Evaluate risk characteristics of individual portfolios, and
10. Monitor and evaluate fees.

### **Reporting Responsibilities**

The Committee, represented by its Chair or assigned Committee member, shall report at least semi-annually, or more often as required, to the Board. These



presentations should include, but not be limited to, the following with respect to the EITC Foundation assets:

1. EITC Foundation assets, operating and administrative expenses and costs of the investments (e.g., fees).
2. Asset allocation and diversification.
3. Review investment performance, measured in relation to benchmarks including peer group data.
4. Status of Committee organization and composition.
5. Summary of significant issues.

The Committee shall require its delegates to submit such reports as the Committee deems necessary to assist it in satisfying its monitoring obligations.

### **Conflicts of Interest**

All Committee members and other persons acting as advisors, consultants, or delegates of the Committee shall adhere to the following:

1. Each person shall be alert to any potential conflicts of interest that may arise in conducting affairs for personal reasons and on behalf of the EITC Foundation. Personal interests shall not interfere with the application of unbiased and objective judgment to the management of the assets of the EITC Foundation.
2. Avoid communicating any information regarding investment transactions taking place on behalf of the EITC Foundation, other than disclosures to management of the College or other members of the Board for business purposes that are not inconsistent with the interests of the EITC Foundation.
3. If any person is uncertain about potential conflicts of interest under these guidelines, the question shall be brought to the attention of the Committee Chair for determination. A potential conflict involving the Committee Chair shall be brought to the attention of the Board Chair.
4. Be alert to any potential conflict of interest which may arise in conducting business on behalf of the EITC Foundation. In this connection, all Committee members, advisors and consultants are specifically prohibited from seeking or accepting gifts, favors, preferential treatment or special arrangements of material value from other persons, which are or could be viewed as an inducement for business.
5. Each Committee member should annually update the Statement Concerning Possible Conflict of Interest (Attachment C).



### **Self-Assessment**

Annually, but no less frequent than every 18 months, the Committee shall conduct a self-assessment (Attachment D) to analyze how well the Committee meets a defined fiduciary standard of excellence and to improve the Committee's long-term investment performance.



### Adoption of Operating Policies

The Operating Policies of the EITC Foundation Finance and Investment Committee are approved by

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Committee Chair

EITC Foundation Finance and  
Investment Committee

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Date

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EITC Foundation Chair

EITC Foundation Board of Directors

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Date

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EITC Foundation Vice Chair

EITC Foundation Board of Directors

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Date

---

EITC Foundation Treasurer/Secretary

EITC Foundation Board of Directors

---

Date



## Attachment A

### Delegations of Authority (Committee Strategic Actions)

Delegated Authority	Persons Receiving Delegation*
Authority to implement Committee decisions to appoint, remove, and replace investment managers	Executive Director, EITC Foundation
Authority to make the necessary adjustments to non-policy portions of third-party agreements that are required to maintain efficient day-to-day investment operations	Executive Director, EITC Foundation
Authority to take action to safeguard assets	Executive Director, EITC Foundation

\* The full Committee will be advised by the Executive Director as to actions taken as soon as administratively practicable.



## Attachment A

### Delegations of Authority (continued)

#### (Functional/Operational Responsibilities)

Delegated Authority	Persons Receiving Delegation
Authority to approve fee invoices charged by investment managers and other service providers.	Executive Director, EITC Foundation
Authority to execute incidental papers or to undertake other minor actions in order to implement, complete, or effectuate action of the Committee or of any delegate of the Committee as described in the foregoing delegations once such underlying actions has been properly taken.	Executive Director, EITC Foundation
Signature authority to execute any documents on behalf of the Committee relating to terms of agreement with investment managers.	Executive Director, EITC Foundation Chair, EITC Foundation Chair, Finance and Investment Committee, EITC Foundation Treasurer, EITC Foundation

## **Attachment B**

### **Roles and Responsibilities of the Committee Chair**

The Chair position is responsible for the integrity of the Committee's processes and has the following specific duties:

1. Acts as the spokesperson for the Committee on all matters.
2. Determines and approves that meeting's agenda in preparation for each Committee meeting.
4. Issues the call for meetings and ensures the agenda and pre-reading materials are distributed before the meeting.
5. Confirms that the meeting is duly convened and properly constituted.
6. Conducts the meeting according to the Committee's Operating Policies. In the absence of the Chair, the Committee member delegate presides at the meeting.
7. Decides points of order and other issues of procedure; the order of speakers; and when there has been sufficient discussion to call for a vote.
8. Puts motions and amendments to a vote and declares the result.
9. Ensures minutes for each meeting are kept and maintained.
10. Ensures delivery of the information that new members of the Committee need and, in conjunction with the Executive Director, EITC Foundation, conducts an orientation program for the new member.
11. Assures that semi-annual reports are provided to the Board.



## Attachment C

### Statement Concerning Potential Conflict of Interest

The undersigned acknowledges receipt of the EITC Foundation Finance and Investment Committee Operating Policies.

By my signature affixed below, I acknowledge my agreement with the spirit and intent of these policies and, I agree to report to the Committee Chair any possible conflicts (other than those stated below) that may develop before completion of the next annual statement.

- ☐ I am not aware of any conflict of interest
- ☐ I do or may have a conflict of interest in the following area(s) (list below):
  - 
  - 
  -

\_\_\_\_\_  
 Name (please print): Date:

\_\_\_\_\_  
 Signature



## Attachment D

Self-Assessment of Committee Fiduciary Excellence<sup>a</sup>

The following assessment is completed by the Committee and documented by Chair. Minority opinion on a response to a question shall be documented in the “comment” section. Each question is intended to be answered

<b><i>Self-Assessment Question</i></b>	<b><i>Yes/No</i></b>	<b><i>Comment</i></b>
Are investments managed in accordance with EITC Foundation Bylaws and Investment Policy?		
Are the roles and responsibilities of all involved parties defined, documented, and acknowledged?		
Is there no indication that fiduciaries and parties in interest are involved in self-dealing?		
Are service agreement and contracts in writing? Are they written without provisions that conflict with fiduciary standards of care?		
Has an investment time horizon been identified?		
Has a risk level been identified?		
Has an expected return to meet investment objectives been identified?		
Are selected asset classes consistent with the identified risk, return, and time horizon?		
Are selected asset classes consistent with implementation and monitoring constraints?		
Is there an Investment Policy Statement which contains the detail to define, implement, and manage a specific investment strategy?		
Is the investment strategy implemented in compliance with the required level of prudence?		

<sup>a</sup> Concepts tailored from Self-Assessment of Fiduciary Excellence (SAFE<sup>TM</sup>) for Investment Stewards, Fiduciary360, 2007

<b><i>Self-Assessment Question</i></b>	<b><i>Yes/No</i></b>	<b><i>Comment</i></b>
Are investment vehicles appropriate for the portfolio size?		
Is a due diligence process followed in selecting investment advisors and managers?		
Are there periodic reports comparing investment performance against an appropriate index, peer group and Investment Policy Statement objectives?		
Are periodic reviews made of qualitative and/or organizational changes of investment decision-makers?		
Are fees for investment management consistent with agreements and/or expectations?		
Overall Assessment of Committee effectiveness in meeting its responsibilities		

**EXHIBIT "G"**

**Code of Ethics and Conduct**

**Eastern Idaho Technical College Foundation  
Code of Ethics**

**I. Personal and Professional Integrity**

All staff, board members and volunteers of The Eastern Idaho Technical College Foundation ("Foundation") act with honesty, integrity and openness in all their dealings as representatives of the Foundation. The Foundation promotes a working environment that values respect, fairness and integrity.

**II. Governance**

The Foundation has an active governing body that is responsible for setting the mission and strategic direction of the Foundation and oversight of the finances, operations, and policies of the Foundation. The governing body:

Ensures that its board members have the requisite skills and experience to carry out their duties and that all members understand and fulfill their governance duties acting for the benefit of the Foundation and its public purpose;

Has a conflict of interest policy that ensures that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means; and

Is responsible for the hiring, firing, and regular review of the performance of the Foundation Executive Director, and ensures that the compensation of the chief executive officer is reasonable and appropriate;

Ensures that the Foundation Executive Director and appropriate staff provide the governing body with timely and comprehensive information so that the governing body can effectively carry out its duties;

Ensures that the Foundation conducts all transactions and dealings with integrity and honesty;

Ensures that the Foundation promotes working relationships with board members, staff, volunteers, and program beneficiaries that are based on mutual respect, fairness and openness;

Ensures that the Foundation is fair and inclusive in its hiring and promotion policies and practices for all board, staff and volunteer positions;

Ensures that policies of the Foundation are in writing, clearly articulated and officially adopted;

Ensures that the resources of the Foundation are responsibly and prudently managed; and,

Ensures that the Foundation has the capacity to carry out its programs effectively.

**IV. Legal Compliance**

The Foundation is knowledgeable of and complies with all laws, and regulations.

**V. Responsible Stewardship**

The Foundation manages its funds responsibly and prudently;

The Foundation spends a reasonable percentage of its annual budget on programs in pursuance of its mission;

The Foundation spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional management;

The Foundation compensates staff, and any others who may receive compensation, reasonably and appropriately;

The Foundation has reasonable fund raising costs;

The Foundation prudently draws from endowment funds consistent with donor intent and to support the public purpose of the Foundation; The Foundations ensures that all spending practices and policies are fair, reasonable and appropriate to fulfill the mission of the Foundation; and,

All financial reports are factually accurate and complete in all material respects.

**VI. Openness and Disclosure**

The Foundation provides comprehensive and timely information to the public, the media, and all stakeholders and is responsive in a timely manner to reasonable requests for information. All information about the Foundation will fully and honestly reflect the policies and practices of the Foundation. Basic informational data about the Foundation, such as the Form 990, reviews and compilations, and audited financial statements will be available to the public. All solicitation materials accurately represent the Foundation's policies and practices and will reflect the dignity of program beneficiaries. All financial, organizational, and program reports will be complete and accurate in all material respects.

**VII. Program Evaluation**

The Foundation regularly reviews policy and procedure effectiveness and has mechanisms to incorporate lessons learned into future planning. The Foundation is committed to improving procedure and organizational effectiveness and develops mechanisms to promote learning from its activities and the field. The Foundation is responsive to changes in its field of activity and is responsive to the needs of its constituencies.

**VIII. Inclusiveness and Diversity**

The Foundation has a policy of promoting inclusiveness and its staff, board and volunteers reflect diversity in order to enrich its programmatic effectiveness. The Foundation takes meaningful steps to promote

inclusiveness in its hiring, retention, promotion, board recruitment and constituencies served.

### **IX. Fundraising**

The Foundation is truthful in their solicitation materials. The Foundation respects the privacy concerns of individual donors and expends funds consistent with donor intent. The Foundation discloses important and relevant information to potential donors.

In raising funds from the public, the Foundation respects the rights of donors, as follows:

To be informed of the mission of the Foundation, the way the resources will be used and their capacity to use donations effectively for their intended purposes;

To be informed of the identity of those serving on the Foundation's governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities;

To have access to the Foundation's most recent financial reports;

To be assured their gifts will be used for the purposes for which they were given;

To receive appropriate acknowledgement and recognition;

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by the law;

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature;

To be informed whether those seeking donations are volunteers, employees of the Foundation or hired solicitors;

To have the opportunity for their names to be deleted from lists that the Foundation may intend to share; and,

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

### **X. Grant-Making Guidelines**

In making grants, the Foundation respects the rights of all divisions of the college as grantees as follows:

The Foundation has constructive relations with grant seekers based on mutual respect and shared goals;

The Foundation communicates clearly and on a timely basis with potential grantees;

The Foundation treats grant seekers and grantees fairly and with respect;

The Foundation respects the expertise of grant seekers in their fields of knowledge;

The Foundation seeks to understand and respect the organizational capacity and needs of grant seeking organizations; and,

The Foundation respects the integrity of the mission of grant seeking organizations.

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