

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010**

TAB	DESCRIPTION	ACTION
1	FY 2011 SOURCES AND USES REPORT	Information item
2	FY 2011 SUPPLEMENTAL APPROVAL Proprietary Schools Spending Authority	Motion to approve
3	FY 2012 BUDGET REQUEST LINE ITEM Charter School Commission Director	Motion to approve
4	FY 2012 BUDGET REQUEST WICHE Program Transfer to University of Utah	Motion to approve
5	FY 2012 BUDGET REQUEST LINE ITEM Technology Officer	Motion to approve
6	AMENDMENT TO BOARD POLICY Section V.M. – Intellectual Property, 1st Reading	Motion to approve
7	AMENDMENT TO BOARD POLICY Section V.R. – Differential Fees, 1st Reading	Motion to approve
8	IDAHO STATE UNIVERSITY Land Gift Agreement – Bistline Park	Motion to approve
9	UNIVERSITY of IDAHO Unified Communications Initiative	Information item
10	UNIVERSITY of IDAHO Theophilus Tower Elevator Modernization & Life Safety Improvements	Motion to approve
11	UNIVERSITY of IDAHO Formation of an Applied Research Entity	Motion to approve

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

TAB	DESCRIPTION	ACTION
12	IDAHO EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND Property Sublease – IESDB & Gooding Recreation District	Motion to approve

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

FY 2011 College and University "Summary of Sources and Uses of Funds"

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections V.B.4.b.(1), V.B.5.c. and V.B.6.b.

BACKGROUND/DISCUSSION

The College and Universities receive funding from a variety of sources. A summary of the revenues sources is as follows:

Revenue types include:

Approp: General Funds – State appropriation of state funds

Approp: Federal Stimulus – American Recovery and Reinvestment Act of 2009

Approp: Endowment Funds – ISU, UI and LCSC are the beneficiaries of income from state endowment lands

Approp: Student Fees – Tuition and Fees approved by the Board; Legislature provides spending authority

Institutional Student Fees – Fees approved by the institution presidents

Federal Grants & Contracts – Grants and contracts awarded by the Federal government

State Grants & Contracts – Grants and contracts awarded by the State

Private Gifts, Grants & Contracts – Other non-governmental gifts, grants and contracts

Sales & Services of Educational Activities – Includes: (i) revenues that are related incidentally to the conduct of instruction, research, and public service and (ii) revenues of activities that exist to provide instructional and laboratory experience for students and that incidentally create goods and services that may be sold to students, faculty, staff, and the general public. Examples would include sales of scientific and literary publications, testing services, etc.

Sales & Services of Auxiliary Enterprises – An institutional entity that exists predominantly to furnish goods or services to students, faculty, or staff, and that charges a fee directly related to the cost of the goods or services. Examples include residence halls, food services, student unions, bookstores, copy centers, health centers, etc.

Indirect Costs/Other – Also known as Facilities and Administrative (F&A) Cost recovery, on many grants an institution may charge a grantor for indirect costs. The expense to the grant is not a specifically identifiable cash outlay but a "recovery" of general overhead costs.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

The institutions' expenditures fall into the following standard functional categories:

Expenditure Categories:

Instruction – expenses for all activities that are part of an institution's instruction program (credit and noncredit courses; academic, vocational, and technical instruction; remedial and tutorial instruction; etc.)

Research – all expenses for individual and/or project research as well as that of institutes and research centers

Public Service -- expenses for activities established primarily to provide non-instructional services beneficial to individuals and groups external to the institution (e.g. conferences, institutes, radio and television, consulting, etc.)

Library – expenses for retention, preservation, and display of educational materials and organized activities that directly support the operation of a catalogued or otherwise classified collection

Student Services – expenses incurred for offices of admissions, registrar and financial aid, student activities, cultural events, student newspapers, intramural athletics, student organizations, etc.

Physical Plant – all expenses for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant.

Institutional Support – expenses for central, executive-level activities concerned with management and long-range planning for the entire institution, such as planning and programming operations and legal services; fiscal operations; activities concerned with community and alumni relations, including development and fund raising; etc.

Academic Support – expenses incurred to provide support services for the institution's primary missions: instruction, research, and public service (includes academic administration, museums, galleries, A-V services, etc.)

Athletics – expenses for intercollegiate sports programs are a separately budgeted auxiliary enterprise

Auxiliary Enterprises – an enterprise which exists to furnish goods or services to students, faculty, staff, other institutional departments, or incidentally to the general public, and charges a fee directly related to, although not necessarily equal to, the cost of the goods or services. The distinguishing characteristic of an auxiliary enterprise is that it is managed to operate as a self-supporting activity. Examples include residence halls, food services, student unions, bookstores, copy centers, health centers, etc.

Scholarships/Fellowships – includes expenses for scholarships and fellowships (from restricted or unrestricted funds) in the form of grants to students.

Other – institution specific unique budgeted expenditures (e.g. \$10M for UI's Center for Livestock and Environmental Studies)

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

IMPACT

The attached worksheets provide a high level overview of the institutions' sources of funding and expenditures based on the standard categories listed above. It's important to understand that these figures represent the institutions' operating budgets excluding any mid-year adjustments (i.e. holdbacks). The trend analysis shows how the allocation of budgeted revenues and expenditures has changed since fiscal year 2005.

STAFF COMMENTS AND RECOMMENDATIONS

Institution staff will be available to answer questions from the Board.

ATTACHMENTS

Attachment 1 – Summary Report	Page 5
Attachment 2 – Boise State University	Page 6
Attachment 3 – Idaho State University	Page 7
Attachment 4 – University of Idaho	Page 8
Attachment 5 – Lewis-Clark State College	Page 9

BOARD ACTION

This item is for informational purposes only. Any action will be at the Board's discretion.

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**College and Universities
Sources and Uses of Funds**

a		b	c	d	e	f	g	h	h vs b
		2005	2006	2007	2008	2009	2010	2011	
		Amount	Amount	Amount	Amount	Amount	Amount	Amount	% Change
Revenues by Source:									
1	Approp: General Funds	\$272,448,581	\$279,478,229	\$296,920,896	\$314,296,445	\$334,513,827	\$299,109,226	\$259,619,803	-5%
2	Approp: Federal Stimulus	\$0	\$0	\$0	\$0	\$0	\$15,140,600	\$4,305,900	100%
3	Approp: Endowment Funds	10,020,500	9,519,600	7,624,800	7,851,500	8,595,000	9,616,400	9,616,600	-4%
4	Approp: Student Fees	108,825,988	119,816,276	125,321,912	127,109,732	133,817,937	147,923,452	177,342,376	63%
5	Institutional Student Fees	52,006,853	49,669,497	60,248,455	53,727,411	68,778,167	70,354,988	66,974,551	29%
6	Federal Grants & Contracts	233,298,750	239,722,559	238,265,986	253,035,778	292,749,636	331,450,919	362,040,370	55%
7	State Grants & Contracts	33,309,177	26,981,445	28,005,013	29,078,797	22,579,764	19,547,568	17,498,273	-47%
8	Private Gifts, Grants & Contr	35,258,587	41,039,617	42,875,928	43,797,552	51,434,827	59,712,799	49,830,636	41%
9	Sales & Serv of Educ Act	40,369,744	41,522,693	41,496,881	53,922,434	37,816,556	36,919,925	36,783,785	-9%
10	Sales & Serv of Aux Ent	89,412,979	95,170,625	94,717,922	100,955,358	115,589,376	106,988,207	110,074,583	23%
11	Indirect Costs/Other	25,993,662	24,137,408	36,981,057	35,718,609	48,810,956	47,808,142	46,231,825	78%
12	Total Revenues	\$900,944,821	\$927,057,949	\$972,458,849	\$1,019,493,616	\$1,114,686,046	\$1,144,572,226	\$1,140,318,702	27%
13									
14	Expenditures by Function								
15	Instruction	\$260,771,739	\$266,669,177	\$287,421,566	\$295,923,196	\$307,151,714	\$291,089,441	\$293,975,876	13%
16	Research	116,516,484	121,991,399	120,728,803	129,378,452	127,785,344	125,105,050	115,068,126	-1%
17	Public Service	34,587,177	36,561,461	40,459,200	47,059,968	47,662,734	49,488,730	49,019,729	42%
18	Library	19,466,184	20,092,873	20,792,704	21,454,773	23,459,250	21,374,490	20,813,000	7%
19	Student Services	25,932,656	28,582,295	29,736,732	32,972,253	30,472,367	32,633,863	33,427,914	29%
20	Physical Plant	46,553,292	49,227,111	66,870,061	65,154,483	64,470,077	67,829,615	62,687,480	35%
21	Institutional Support	61,335,256	69,124,860	79,086,293	82,296,849	90,102,914	93,823,821	90,330,852	47%
22	Academic Support	45,847,818	38,197,897	40,115,889	45,332,876	51,544,254	51,721,310	45,267,325	-1%
23	Athletics	28,520,021	30,367,783	36,593,287	40,657,009	47,590,708	49,710,854	57,343,387	101%
24	Auxiliary Enterprises	95,502,346	93,922,882	87,275,677	114,701,463	125,380,599	96,580,835	92,130,178	-4%
25	Scholarships/Fellowships	164,407,479	170,763,376	163,651,500	169,710,847	218,966,700	251,478,277	277,901,870	69%
26	Other	0	0	0	0	0	13,334,237	3,045,065	100%
27									
28	Total Bdgt by Function	\$899,440,452	\$925,501,114	\$972,731,712	\$1,044,642,169	\$1,134,586,661	\$1,144,170,523	\$1,141,010,803	27%

Boise State University
Sources and Uses of Funds

a		b	c	d	e	f	g	h	
		2005	2006	2007	2008	2009	2010	2011	g vs b
		Amount	Amount	Amount	Amount	Amount	Amount	Amount	% Change
Revenues by Source:									
1	Approp: General Funds	\$74,953,295	\$77,159,390	\$82,700,657	\$87,917,018	\$95,700,847	\$78,835,980	\$70,506,500	-6%
2	Approp: Federal Stimulus	\$0	\$0	\$0	\$0	\$0	\$4,856,400	\$1,381,100	100%
3	Approp: Endowment Funds	0	0	0	0	0	0	0	0%
4	Approp: Student Fees	36,546,100	41,320,900	44,221,300	46,870,800	50,322,017	55,165,000	61,818,400	69%
5	Institutional Student Fees	21,969,390	19,080,195	26,231,241	18,728,250	30,380,097	29,373,721	24,094,812	10%
6	Federal Grants & Contracts	52,019,563	55,016,949	58,133,999	59,296,679	84,068,486	89,641,739	91,434,574	76%
7	State Grants & Contracts	7,108,132	7,883,212	7,647,024	7,799,964	3,246,324	2,840,328	2,897,135	-59%
8	Private Gifts, Grants & Contr	8,199,105	5,596,314	7,378,471	10,021,346	13,309,333	22,489,477	17,621,575	115%
9	Sales & Serv of Educ Act	3,395,575	4,257,000	1,800,000	1,108,983	0	0	0	-100%
10	Sales & Serv of Aux Ent	39,704,308	40,977,493	40,194,638	42,643,084	56,966,521	49,268,011	47,671,784	20%
11	Indirect Costs/Other	7,052,582	5,391,625	16,049,705	14,466,121	18,679,149	18,356,568	12,801,879	82%
12	Total Revenues	\$250,948,050	\$256,683,078	\$284,357,034	\$288,852,245	\$352,672,774	\$350,827,224	\$330,227,759	32%
13									
14	Expenditures by Function								
15	Instruction	\$80,525,521	\$82,157,835	\$87,296,917	\$89,639,975	\$95,003,418	\$86,989,423	\$90,631,721	13%
16	Research	8,866,706	11,655,171	11,740,987	13,413,787	17,891,374	18,088,831	15,026,939	69%
17	Public Service	7,775,245	10,225,134	10,229,817	10,884,802	13,130,655	12,534,632	12,786,895	64%
18	Library	6,422,078	6,625,894	6,968,244	7,135,544	7,407,503	7,160,147	6,997,873	9%
19	Student Services	7,131,625	7,084,052	7,427,013	9,166,797	10,269,955	13,195,914	11,941,830	67%
20	Physical Plant	11,876,716	12,381,078	23,045,219	14,597,502	17,037,209	18,189,410	15,081,111	27%
21	Institutional Support	14,056,505	19,040,763	23,277,272	22,961,137	30,496,067	33,745,968	26,710,970	90%
22	Academic Support	19,848,699	13,584,601	14,300,067	14,708,294	18,854,391	22,050,035	15,686,466	-21%
23	Athletics	13,969,848	14,934,908	16,889,631	19,719,525	25,584,503	26,312,240	32,806,108	135%
24	Auxiliary Enterprises	36,119,667	33,136,189	34,750,662	58,090,714	67,963,096	38,904,476	33,068,047	-8%
25	Scholarships/Fellowships	42,907,184	45,635,561	49,034,486	50,787,808	68,285,664	72,646,006	71,650,735	67%
26	Other	0	0	0	0	0	800,000	1,381,100	100%
27									
28	Total Bdgt by Function	\$249,499,794	\$256,461,186	\$284,960,315	\$311,105,885	\$371,923,835	\$350,617,082	\$333,769,795	34%

Idaho State University
Sources and Uses of Funds

a		b	c	d	e	f	g	h	
		2005	2006	2007	2008	2009	2010	2011	g vs b
		Amount	Amount	Amount	Amount	Amount	Amount	Amount	% Change
Revenues by Source:									
1	Approp: General Funds	\$70,887,006	\$73,388,911	\$77,670,511	\$82,812,633	\$87,622,446	\$78,598,679	\$70,977,925	0%
2	Approp: Federal Stimulus	\$0	\$0	\$0	\$0	\$0	\$4,126,300	\$1,173,500	100%
3	Approp: Endowment Funds	2,121,200	1,602,800	1,697,400	1,843,500	2,020,700	2,121,300	2,121,500	0%
4	Approp: Student Fees	29,382,188	32,442,976	32,294,712	32,365,532	34,013,220	37,588,552	46,318,776	58%
5	Institutional Student Fees	14,920,315	14,414,106	16,071,314	17,184,861	18,281,770	19,699,467	21,224,439	42%
6	Federal Grants & Contracts	80,065,987	81,665,610	80,075,287	85,056,199	89,146,950	103,935,280	110,370,296	38%
7	State Grants & Contracts	8,934,945	7,389,933	7,174,189	7,229,833	7,560,240	8,034,740	6,345,938	-29%
8	Private Gifts, Grants & Contr	10,355,432	12,623,178	11,726,432	10,911,881	12,012,194	13,366,222	11,994,861	16%
9	Sales & Serv of Educ Act	1,605,669	3,324,093	3,779,481	4,462,051	4,930,056	5,146,525	5,124,285	219%
10	Sales & Serv of Aux Ent	17,110,969	20,061,353	21,152,209	21,976,328	22,222,614	20,371,796	20,904,227	22%
11	Indirect Costs/Other	5,080,880	5,709,483	7,785,852	8,405,673	9,560,307	8,728,874	10,195,746	101%
12	Total Revenues	\$240,464,591	\$252,622,443	\$259,427,387	\$272,248,491	\$287,370,497	\$301,717,735	\$306,751,493	28%
13									
14	Expenditures by Function								
15	Instruction	\$76,601,885	\$80,248,202	\$85,772,004	\$88,505,670	\$92,765,539	\$89,304,998	\$89,060,654	16%
16	Research	21,526,358	23,988,606	25,473,180	26,517,682	29,973,932	30,392,481	20,412,429	-5%
17	Public Service	4,764,332	4,219,670	4,024,912	4,512,895	4,826,166	3,851,861	3,180,603	-33%
18	Library	4,671,191	4,892,400	5,111,275	5,372,714	5,390,026	4,939,251	4,924,218	5%
19	Student Services	7,133,083	8,158,477	7,985,965	8,144,786	8,455,009	7,804,741	7,563,755	6%
20	Physical Plant	12,041,190	13,648,045	14,192,706	15,045,944	15,576,677	18,031,943	16,804,498	40%
21	Institutional Support	14,464,158	15,539,433	17,009,000	16,998,353	18,575,992	18,432,015	22,035,515	52%
22	Academic Support	9,806,524	9,757,741	10,216,285	11,792,910	13,319,827	12,668,776	12,764,214	30%
23	Athletics	4,753,597	4,239,977	7,800,380	7,935,703	8,019,039	7,949,803	8,045,694	69%
24	Auxiliary Enterprises	17,023,428	17,939,811	16,061,787	18,208,958	17,470,121	16,583,859	16,971,281	0%
25	Scholarships/Fellowships	68,144,732	69,206,302	66,368,825	71,621,259	74,518,868	89,821,109	103,552,073	52%
26	Other	0	0	0	0	0	2,534,237	1,425,765	100%
27									
28	Total Bdgt by Function	\$240,930,478	\$251,838,664	\$260,016,319	\$274,656,874	\$288,891,196	\$302,315,074	\$306,740,700	27%

University of Idaho
Sources and Uses of Funds

a		b	c	d	e	f	g	h	
		2005	2006	2007	2008	2009	2010	2011	g vs b
		Amount	Amount	Amount	Amount	Amount	Amount	Amount	% Change
Revenues by Source:									
1	Approp: General Funds	\$111,820,100	\$114,000,200	\$120,350,000	\$126,053,100	\$130,916,100	\$124,207,900	\$102,473,100	-8%
2	Approp: Federal Stimulus	\$0	\$0	\$0	\$0	\$0	\$5,320,600	\$1,513,100	100%
3	Approp: Endowment Funds	6,528,600	6,314,000	4,859,600	4,853,000	5,307,300	6,164,400	6,164,400	-6%
4	Approp: Student Fees	36,454,400	38,737,000	40,956,300	39,755,400	40,948,900	45,653,000	58,422,800	60%
5	Institutional Student Fees	11,248,048	12,241,396	12,938,400	12,851,500	15,100,300	16,279,600	16,514,700	47%
6	Federal Grants & Contracts	98,200,400	99,966,700	98,064,100	106,582,900	117,534,200	131,373,900	152,535,500	55%
7	State Grants & Contracts	15,199,400	9,600,000	10,445,700	11,649,000	9,373,200	5,672,500	5,255,200	-65%
8	Private Gifts, Grants & Contr	15,391,850	21,481,525	23,131,525	22,364,325	25,713,300	23,757,100	19,914,200	29%
9	Sales & Serv of Educ Act	34,072,500	32,619,500	33,733,400	46,151,400	30,586,500	30,473,400	30,459,500	-11%
10	Sales & Serv of Aux Ent	31,364,902	32,911,179	32,578,575	34,080,385	34,199,300	34,999,600	39,162,600	25%
11	Indirect Costs/Other	12,074,600	11,239,800	10,577,100	10,695,690	18,569,800	18,762,300	20,934,200	73%
12	Total Revenues	\$372,354,800	\$379,111,300	\$387,634,700	\$415,036,700	\$428,248,900	\$442,664,300	\$453,349,300	22%
13									
14 Expenditures by Function									
15	Instruction	\$87,665,978	\$87,769,191	\$96,354,214	\$99,357,680	\$99,274,538	\$94,752,796	\$94,092,371	7%
16	Research	85,765,685	85,945,821	83,192,118	89,093,982	79,583,577	76,425,138	79,459,661	-7%
17	Public Service	20,860,200	20,923,357	23,473,500	29,259,100	27,589,351	31,426,724	31,565,877	51%
18	Library	7,303,216	7,455,866	7,750,978	7,940,553	8,267,702	8,220,580	7,840,734	7%
19	Student Services	9,111,614	10,806,744	11,418,175	12,519,033	9,371,106	8,647,739	10,384,949	14%
20	Physical Plant	19,952,438	20,458,277	26,534,082	31,917,175	28,670,636	27,406,419	27,845,934	40%
21	Institutional Support	29,492,620	30,792,442	34,455,803	37,728,185	35,397,800	36,563,262	36,998,463	25%
22	Academic Support	13,673,289	12,094,574	12,868,570	15,972,232	16,833,129	14,393,349	14,363,064	5%
23	Athletics	9,116,746	10,504,469	11,102,793	12,144,504	13,086,274	13,213,731	14,181,585	56%
24	Auxiliary Enterprises	39,056,051	39,544,882	32,002,928	33,099,076	34,460,919	37,284,100	38,768,100	-1%
25	Scholarships/Fellowships	49,988,863	52,538,013	48,193,989	47,203,780	76,068,868	83,854,362	95,965,062	92%
26	Other	0	0	0	0	0	10,000,000	0	0%
27									
28	Total Bdgt by Function	\$371,986,700	\$378,833,636	\$387,347,150	\$416,235,300	\$428,603,900	\$442,188,200	\$451,465,800	21%

**Lewis-Clark State College
Sources and Uses of Funds**

a		b	c	d	e	f	g	h	
		2005	2006	2007	2008	2009	2010	2011	g vs b
		Amount	Amount	Amount	Amount	Amount	Amount	Amount	% Change
Revenues by Source:									
1	Approp: General Funds	\$14,788,180	\$14,929,728	\$16,199,728	\$17,513,694	\$20,274,434	\$17,466,667	\$15,662,278	6%
2	Approp: Federal Stimulus	\$0	\$0	\$0	\$0	\$0	\$837,300	\$238,200	100%
3	Approp: Endowment Funds	1,370,700	1,602,800	1,067,800	1,155,000	1,267,000	1,330,700	1,330,700	-3%
4	Approp: Student Fees	6,443,300	7,315,400	7,849,600	8,118,000	8,533,800	9,516,900	10,782,400	67%
5	Institutional Student Fees	3,869,100	3,933,800	5,007,500	4,962,800	5,016,000	5,002,200	5,140,600	33%
6	Federal Grants & Contracts	3,012,800	3,073,300	1,992,600	2,100,000	2,000,000	6,500,000	7,700,000	156%
7	State Grants & Contracts	2,066,700	2,108,300	2,738,100	2,400,000	2,400,000	3,000,000	3,000,000	45%
8	Private Gifts, Grants & Contr	1,312,200	1,338,600	639,500	500,000	400,000	100,000	300,000	-77%
9	Sales & Serv of Educ Act	1,296,000	1,322,100	2,184,000	2,200,000	2,300,000	1,300,000	1,200,000	-7%
10	Sales & Serv of Aux Ent	1,232,800	1,220,600	792,500	2,255,561	2,200,941	2,348,800	2,335,972	89%
11	Indirect Costs/Other	1,785,600	1,796,500	2,568,400	2,151,125	2,001,700	1,960,400	2,300,000	29%
12	Total Revenues	\$37,177,380	\$38,641,128	\$41,039,728	\$43,356,180	\$46,393,875	\$49,362,967	\$49,990,150	34%
13									
14 Expenditures by Function									
15	Instruction	\$15,978,355	\$16,493,949	\$17,998,431	\$18,419,871	\$20,108,219	\$20,042,224	\$20,191,130	26%
16	Research	357,735	401,801	322,518	353,001	336,461	198,600	169,097	-53%
17	Public Service	1,187,400	1,193,300	2,730,971	2,403,171	2,116,562	1,675,513	1,486,354	25%
18	Library	1,069,699	1,118,713	962,207	1,005,962	2,394,019	1,054,512	1,050,175	-2%
19	Student Services	2,556,334	2,533,022	2,905,579	3,141,637	2,376,297	2,985,469	3,537,380	38%
20	Physical Plant	2,682,948	2,739,711	3,098,054	3,593,862	3,185,555	4,201,843	2,955,937	10%
21	Institutional Support	3,321,973	3,752,222	4,344,218	4,609,174	5,633,055	5,082,576	4,585,904	38%
22	Academic Support	2,519,306	2,760,981	2,730,967	2,859,440	2,536,907	2,609,150	2,453,581	-3%
23	Athletics	679,830	688,429	800,483	857,277	900,892	2,235,080	2,310,000	240%
24	Auxiliary Enterprises	3,303,200	3,302,000	4,460,300	5,302,715	5,486,463	3,808,400	3,322,750	1%
25	Scholarships/Fellowships	3,366,700	3,383,500	54,200	98,000	93,300	5,156,800	6,734,000	100%
26	Other	0	0	0	0	0	0	238,200	100%
27									
28	Total Bdgt by Function	\$37,023,480	\$38,367,628	\$40,407,928	\$42,644,110	\$45,167,730	\$49,050,167	\$49,034,508	32%

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

Revise FY 2011 Budget Request Supplemental: Proprietary Schools

REFERENCE

August 2010

Board approved FY 2012 Budget Requests

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1.
Title 67, Chapter 35, Idaho Code

BACKGROUND/DISCUSSION

Included in the Board-approved FY 2012 budget request for the Office of the State Board of Education (OSBE) was a FY 2011 supplemental appropriation request for proprietary schools. The increase was for personnel costs to buy-out staff time equivalent to approximately 0.33 FTE, and \$3,000 in operating expenses to become members of national and international institutional accreditation verification database service organizations and for travel.

IMPACT

Management has decided to allocate space rent and consumables to some of the programs embedded in the OSBE budget including proprietary schools oversight and charter schools administration. Staff estimates cost allocation of rent and consumables at approximately \$2,000 for proprietary schools. It is also becoming increasingly necessary to conduct investigations and accreditation reviews to ensure compliance statutes and rules. The agency does not have the staff to conduct this work and so must contract with outside entities. An additional \$15,000 of spending authority would provide the necessary flexibility to facilitate compliance with the law. So in summary, on top of the \$3,000 spending authority requested and approved by the Board in August, an additional \$17,000 in spending authority is being requested for a total of \$20,000. The source of funds is registration fees from private postsecondary educational institutions and proprietary schools.

STAFF COMMENTS AND RECOMMENDATIONS

By allocating space rent and consumables to programs, OSBE management will have more accurate information on the full cost of those programs. In addition, anticipating the costs associated with potential enforcement actions and accreditation reviews will give the Board the ability to exercise its authority as needed. Staff recommends approval.

BOARD ACTION

I move to revise the Office of the State Board of Education FY 2011 supplemental budget request for proprietary schools to increase operating expense spending authority from \$3,000 to \$20,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

FY 2012 Budget Request Line Item: Charter School Commission Director

REFERENCE

August 2010

Board approved FY 2012 Budget Requests

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1.
Title 67, Chapter 35, Idaho Code

BACKGROUND/DISCUSSION

At the time of the August agenda preparation, staff did not include a director type position for the Charter School Commission in the FY 2012 Office of the State Board of Education budget request because it was hoped the position would be created as the result of proposed legislation. The Division of Financial Management (DFM) did not approve the legislative idea, but indicated it would support putting the position in the OSBE budget. Since the Board had approved the legislative idea with the position, staff included the position in a line item in the budget request that was due to DFM and Legislative Services Office (LSO) on September 1. Staff is now asking the Board to formally approve the line item.

IMPACT

This budget request includes the addition of an executive level staff position for management of the day-to-day oversight of charter schools authorized by the Public Charter School Commission. The number of authorized schools has increased to the point where one person can no longer provide support to the Commission and manage the day to day oversight of the schools.

ATTACHMENTS

Line Item Budget Request: Charter School Commission Director

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

Public school enrollment grew by 3,447 students from the 2008/2009 year to the 2009/2010 year. Of that growth, 2,751, or 80%, were from charter school students. Twenty-five schools are currently in operation, three are scheduled to open in the fall of 2011, and up to six new public charter schools may be authorized each year. The growth curve of charter schools (and enrollment therein) in Idaho is unsustainable at the current staffing level.

Should the Board not approve this line item, staff will direct DFM and LSO to remove it from the official FY 2012 agency budget request.

Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

BOARD ACTION

I move to approve the FY 2012 line item budget request for the Office of the State Board of Education for a Charter School Commission Director (1.0 FTE) and \$117,400 in General Funds.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

ATTACHMENT 1

AGENCY: Office State Board of Education

Agency No.: 501

FY 2012 Request

FUNCTION: Office State Board of Education

Function No.: 02

Page 1 of 2 Pages

ACTIVITY:

Activity No.:

Original Submission X or
Revision No. ____

Charter School Commission					
A: Decision Unit No: 12.02	Title: Director		Priority Ranking 2 of 2		
DESCRIPTION	General	Dedicated	Federal	Other	Total
FULL TIME POSITIONS (FTP)	1.0				
PERSONNEL COSTS:					
1. Salaries	84,000				84,000
2. Benefits	26,900				26,900
3. Group Position Funding					
TOTAL PERSONNEL COSTS:	110,900				110,900
OPERATING EXPENDITURES by summary object:					
1. Travel	6,500				6,500
2.					
TOTAL OPERATING EXPENDITURES:	6,500				6,500
CAPITAL OUTLAY by summary object:					
1.					
TOTAL CAPITAL OUTLAY:					
T/B PAYMENTS:					
LUMP SUM:					
GRAND TOTAL	117,400				117,400

DESCRIPTION:

Add an executive level staff position for management of the day-to-day oversight of charter schools authorized by the Public Charter School Commission.

NEED: The Office of the State Board of Education needs an executive level staff position to manage the oversight of all schools authorized by the Public Charter School Commission (PCSC). Currently the PCSC authorizes 28 schools. Twenty-five schools are currently in operation and three are scheduled to open in the fall of 2011 (there are also two unapproved petitions under consideration). In addition, Idaho Code §33-5203(2) provides that up to six new public charter schools may be authorized each year. The number of authorized schools has increased to the point where one person simply can no longer provide support to the Commission and manage the day to day oversight of the schools. For example, lack of adequate staff makes it impossible to conduct

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

thorough reviews of chartered schools without obvious or reported deficiencies. Absent thorough reviews, staff is unable to anticipate needed technical assistance or corrective action when issues first arise. As a result, additional schools may begin to fail to provide the academic excellence and/or fiscal responsibility required for public accountability.

Nationally, charter school authorizers average 1 FTE per 5.9 schools (National Association of Charter School Authorizers, 2009 Annual Report). The Idaho PCSC currently authorizes 28 schools but has only 1.5 FTE. To match average staffing levels, the PCSC would have more than 4.5 FTE.

DUTIES: This position would be responsible for ensuring that the schools are operating within state guidelines and are held accountable for operation and performance. This would include analysis of the schools finances, required site visits and analysis and recommendation to the Commission and the Board on statewide policy issues related to public charter schools. This position would direct the efforts of the existing professional level staff person to accomplish these tasks. Additionally, this position would act as secretary designee to the Commission (per Idaho Code §33-5213(1)) and be responsible for gathering information and facilitating PCSC meetings, appeals, and hearings.

C. GOALS & OBJECTIVES ADDRESSED:

SBOE Goals: GOAL 2: CRITICAL THINKING AND INNOVATION

The educational system will provide an environment for the development of new ideas, and practical and theoretical knowledge to foster the development of individuals who are entrepreneurial, broadminded, critical, and creative.

GOAL 3: TRANSPARENT ACCOUNTABILITY - *Increase transparency and accountability in Idaho's public education system.*

Strategies & Measures:

Objective A: Assessment and Accountability – Increase public confidence in Idaho's education system with performance-based assessments and accountability measures.

D. PERFORMANCE INDICATORS:

Indicators specific to the Public Charter School Commission and staff in support thereof are undeveloped due to workload demands.

E. DESCRIBE CITIZEN GROUPS AFFECTED, BENEFITS DERIVED, AND PORTION OF NEED ADDRESSED:

Idaho taxpayers – Proper oversight of schools chartered will allow for better accountability of funds expended.

Charter school patrons – Proper staffing will allow for necessary oversight of schools chartered. This includes the thorough review of chartered schools necessary to assure the academic excellence and/or fiscal responsibility required of these schools.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

Questions:

1. What is being requested and why? What is the agency staffing level for this activity and how much funding by source is in the base?

Currently the Board Office has 1.5 FTE (full-time program manager and half-time administrative support) and \$143,000 allocated to this activity. With 28 schools currently authorized and the potential growth of six additional schools each year, 1.5 FTE is simply not adequate staffing to provide proper oversight. Inadequate staffing levels result in existing staff being reactive, with the majority of their time spent on “problem schools” rather than all schools as is necessary. Continuation of this trend (lack of proper oversight and technical assistance from the Public Charter Commission staff) will likely lead to more schools becoming “problem schools.”

2. What resources are necessary to implement this request?

One additional FTE and associated funding.

3. Who is being served by this request and what are the expected impacts of the funding requested? If this request is not funded who and what are impacted?

Idaho taxpayers – Proper oversight of schools chartered will allow for better accountability of funds expended.

Charter school patrons – Proper staffing will allow for necessary oversight of schools chartered. This includes the thorough review of chartered schools necessary to assure the academic excellence and/or fiscal responsibility required of these schools. This constituency cannot be adequately served without an increase in staff in support of the Commission. Furthermore, lack of adequate staffing could expose the Commission, the State Board and State leaders to criticism from patrons for creating a false sense of security, believing the State is providing oversight of the academic quality and financial position of its charter schools.

4. If this is a high priority item, list reason non-appropriated Line Items from FY 2011 budget request are not prioritized first.

Attach supporting documentation sufficient enough to enable the Board, Division of Financial Management, and the Legislative Budget Office to make an informed decision.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

FY 2012 Budget Request: WICHE Program Transfer to University of Utah

REFERENCE

August 2010

Board approved FY 2012 Budget Requests

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1.
Title 67, Chapter 35, Idaho Code

BACKGROUND/DISCUSSION

The Western Interstate Commission for Higher Education (WICHE) offers the Professional Student Exchange Program (PSEP) which provides students educational opportunities not available in their home states but that exist in other member states. Idaho's participation in PSEP supports two Idaho students annually to attend optometry school in WICHE member states.

In the past, a total of eight Idaho students could be enrolled in this four-year program at any one time. However, in FY 2011 budget cuts to this program of \$31,600 were the equivalent of two students. As a result, in the 2010-11 academic year there will be no Idaho-sponsored first year students, leaving only six Idaho-sponsored students (years 2-4) who were already in the pipeline.

The University of Utah medical education program provides opportunities for eight Idaho students annually to attend medical school through a cooperative agreement. A total of 32 Idaho students can be enrolled in this four-year program. For FY 2011, the program sustained a base reduction of \$34,500. As a result, all Idaho students will pay an additional \$1,078 (34,500/32) in tuition to cover the difference between reduced state support and contract costs.

The recommendations of the Board's Medical Education Study Committee placed a high priority on expanding medical education opportunities in the State of Idaho.

IMPACT

This request would support the transfer of FY 2012 base funding for 2nd year WICHE optometry seats to the University of Utah program to partially offset the shortfall in that program's state appropriation.

STAFF COMMENTS AND RECOMMENDATIONS

The WICHE PSEP support fee paid by the state for FY 2011 is \$15,600 per student or a total of \$93,600. The five-year (2001-2005) return rate for Idaho-sponsored students was 36%. In other words, just over one-third of the Idaho-sponsored students who graduated between 2001 and 2005 were licensed and/or practicing in Idaho (as of December 2006 to November 2007 depending on when the state researched its graduates and returned its data). While this

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

data is dated and reflects a snapshot in time, one thing is clear – the State's return on investment for these students has not been great. State-sponsored medical school seats are a higher priority to the Board in light of limited State funding.

Staff recommends phasing-out funding for the WICHE optometry seats over the next three fiscal years (FY 2012 – 2014) and reallocating the base funding to the state supported medical education programs.

BOARD ACTION

I move to approve the FY 2012 budget request to transfer \$31,600 from the WICHE optometry program to the University of Utah Medical Education Program.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

FY 2012 Budget Request Line Item: Technology Program Manager

REFERENCE

August 2010

Board approved FY 2012 Budget Requests

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1.
Title 67, Chapter 35, Idaho Code

BACKGROUND / DISCUSSION

By acceptance of the American Recover and Reinvestment Act (ARRA) State Fiscal Stabilization Funds (SFSF) in 2009 the State agreed to several assurances, one of which was to have a P-16 Longitudinal Data System in place by September 30, 2011. Since the Board office did not have the resources or expertise to coordinate and manage this effort, it contracted with BSU for a Business Analyst/SLDS Project Manager. This position is on loan from BSU and now working to identify the best plan for a P-20 to workforce longitudinal data system, implementing the Education Unique Identification at the postsecondary level, and the various other efforts and activities associated with an SLDS.

While the ARRA SFSF minimum requirements are for a P-16 system, the goal is to identify the scope and requirements of a P-20 to workforce longitudinal data system so that ultimately the Board will have the ability to adequately and accurately assess and evaluate the effectiveness of the State's educational system. Even after the SLDS is fully developed and implemented, it will require ongoing project management.

IMPACT

This budget request includes the addition of a program manger level staff position for management of the SLDS and associated funding.

ATTACHMENTS

Attachment 1-Line Item Budget Request: Tech Program Manager

Page 3

Attachment 2- ARRA SFSF-SLDS Requirements

Page 7

STAFF COMMENTS AND RECOMMENDATIONS

In accepting SFSF, Idaho agreed to education reform assurances. There are four assurances, the second of which is that the State will establish a longitudinal data system. There are, however, no identified funds available for creation of a P-20 to workforce longitudinal data system beyond an existing State appropriation and federal grant being managed by the State Department of Education.

As referenced above, the Board office was able to address the critical and time-sensitive need for a SLDS program manager with a one-time arrangement for a

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

loaned employee. This arrangement, however, is an unsustainable business practice from both a program management and human resource perspective. In order to develop and maintain a quality statewide longitudinal data system, the Board office must have a dedicated position.

Staff recommends approval.

BOARD ACTION

I move to approve the FY 2012 line item budget request for the Office of the State Board of Education for a Technology Program Manager (1.0 FTE) and \$98,100 in General Funds.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

ATTACHMENT 1**AGENCY: Office of the State Board of Education**

Agency No.: 501

FY 2012 Request

FUNCTION: OSBE Administration

Function No.:

Page _1_ of _2 Pages

ACTIVITY:

Activity No.:

Original Submission ___ or

Revision No. _1_

A: Decision Unit No: 12.05		Title: Technology Program Manger			Priority Ranking 2 of 4
DESCRIPTION	General	Dedicated	Federal	Other	Total
FULL TIME POSITIONS (FTP)	1.0				
PERSONNEL COSTS:					
1. Salaries	\$71,600				
2. Benefits	\$23,500				
3. Group Position Funding					
TOTAL PERSONNEL COSTS:	\$95,100				
OPERATING EXPENDITURES by summary object:					
1. Travel	\$2,000				
TOTAL OPERATING EXPENDITURES:	\$2,000				
CAPITAL OUTLAY by summary object:					
1. Computer, monitor	\$1,000				
TOTAL CAPITAL OUTLAY:	\$1,000				
T/B PAYMENTS:	\$0				
LUMP SUM:					
GRAND TOTAL	\$98,100				

Goal III: Efficiency

Deliver educational, training, rehabilitation and information/research programs and services through the public education system in a manner which makes effective and efficient use of resources.

Description:

In accepting American Recover and Reinvestment Act (ARRA) State Fiscal Stabilization Funds (SFSF) in 2009, the State agreed to certain education reform assurances. Of the four assurances, the second is that the State will establish a longitudinal data system. While the ARRA SFSF minimum requirements are for a P-16 system, the goal is to identify the scope and requirements of a P-20 and workforce longitudinal data system to improve reporting capabilities that track various programs and outcomes between grade levels. There are, however, no identified funds available for creation of a P-20 to workforce longitudinal data system beyond an existing State appropriation and federal grant in the State Department of Education for a K-12 SLDS.

The financial requirements of a P-20 to workforce longitudinal data system would be derived from the Board's determination of what the system requirements will be. Regardless, the Office of the State Board of Education must have one (1) FTP for a Technology Program Manager to coordinate and manage the postsecondary statewide longitudinal data system (SLDS).

This position will also act as the liaison with the Information Technology Resource Management Council (ITRMC) of Idaho.

1. What is being requested and why? What is the agency staffing level for this activity and how much funding by source is in the base?

One FTP and \$98,100 in General Funds. There is no base funding for this new federal mandate.

2. What resources are necessary to implement this request?

- a. List by position: position titles, pay grades, full or part-time status, benefit eligibility, anticipated dates of hire, and terms of service.

Technology Program Manager; pay grade N (pay range: \$48,651 - \$89,502, policy: \$71,600); full-time and benefitted; anticipated date of hire: August 2011

- b. Note any existing human resources that will be redirected to this new effort and how existing operations will be impacted.

Director of Research will supervise the position and has redirected some of her time to this effort.

- c. List any additional operating funds and capital items needed.

\$2,000 for travel (OE) and \$1,000 for PC (one-time CO)

3. Please break out fund sources with anticipated expenditures in the financial data matrix. (Please separate one-time vs. ongoing requests.) Non-General funds should include a description of major revenue assumptions: new customer base, fee structure changes, ongoing anticipated grants, etc.

Fund source is 100% General Fund

4. Who is being served by this request and what are the expected impacts of the funding requested? If this request is not funded who and what are impacted?

All students, parents, educators, and policy makers in Idaho will be served by a SLDS.

Failure to fund this request will seriously jeopardize the State's ability to meet its ARRA SFSF education reform assurances.

- 5. If this is a high priority item, list reason non-appropriated Line Items from FY 2011 budget request are not prioritized first.**

This item was not requested in the FY 2011 budget.

- 6. Attach supporting documentation sufficient enough to enable the Board, Division of Financial Management, and the Legislative Budget Office to make an informed decision.**

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ARRA/SFSF Statewide Longitudinal Data System Requirements

System Requirements:

The State shall ensure that the statewide P-16 data system includes the following elements. This does not mean we must have ONE system; it can be multiple systems with the capability to link the entire P-16 spectrum. But, if there are multiple systems, each system must collect a minimum of the following:

For the entire P-16 spectrum:

1. A unique statewide student identifier
2. Student-level enrollment, demographic, and program participation information
3. Student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P-16 education programs

The following are specific system element requirements for K-12 and Postsecondary respectively:

K-12 ONLY (these data elements are required for K-12 only):

1. Yearly test records of individual students with respect to assessments
2. Information on students not tested by grade and subject
3. Teacher identifier with the ability to match teachers to students
4. Student-level transcript information on courses completed and grades earned
5. Student-level college readiness test scores

Postsecondary ONLY (these data elements are required for postsecondary only):

1. Information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework;
2. Other information determined necessary to address alignment and adequate preparation for success in postsecondary education.

System Capabilities:

In addition to the minimum system requirement, there are a set of minimum capabilities. The “system” must be able to do the following for the entire P-16 spectrum, regardless of whether there is one centralized system or multiple systems that communicate with each other. These minimum required capabilities will also have to be taken into consideration when determining which data elements need to be added to the above list in order to meet these requirements. In implementing the statewide P-16 education data system, the State shall:

1. Ensure the system has the capacity to communicate with higher education data systems

2. Ensure a State data audit system assessing data quality, validity, and reliability
3. Identify factors that correlate to students' ability to successfully engage in and complete postsecondary work without the need for prior developmental coursework
4. Identify factors to increase the percentage of low-income and minority students who are academically prepared to enter and successfully complete postsecondary-level general education coursework
5. Use the data in the system to otherwise inform education policy and practice in order to better align State academic content standards, and curricula, with the demands of postsecondary education, the 21st century workforce, and the Armed Forces

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

Intellectual Property policy amendment - first reading

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The Intellectual Property policy is a guiding principle for the institutions. In addition, the policy requires institutions to develop their own internal policies on technology transfer for Board review and approval.

Industry has voiced concerns to institutions and Board members about ambiguity, whether real or perceived, in the current policy with respect to: (1) vagueness regarding the Board's versus an institution's claim of ownership; and (2) once an institution does claim ownership, what authority it has in terms of transferring, conveying, disclaiming, etc. those ownership rights.

IMPACT

The proposed changes to the policy are intended to clarify the two areas identified above. A definition section is added to define the term "intellectual property". In addition, staff took the opportunity to clean up and standardize language and terminology. Per the policy, institutions will have 12 months to bring their technology transfer policies to the Board for review and approval.

ATTACHMENTS

Attachment 1 – Board Policy V.M. – First Reading.	Page 3
Attachment 2 – Letter of Support from Tom Kealey, Venture Partner, Montlake Capital, LLC, Boise	Page 7
Attachment 3 – Letter of Support from Ward Parkinson, V.P., Patent Attorney, Ovonyx, Inc.	Page 9
Attachment 4 – Letter of Support from Idaho Technology Council	Page 11

STAFF COMMENTS AND RECOMMENDATIONS

The universities' vice presidents for research, technology transfer officers and general counsel worked for many months with Board staff and industry in developing the proposed policy revisions which address the needs of their institutions and industry. The college and universities unanimously support and endorse these changes. Staff recommends approval.

BOARD ACTION

I move to approve the first reading of proposed amendments to Board Policy Section V.M. Intellectual Property as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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~~September 2009~~ October 2010

1. Objectives and Purposes

The State Board of Education, on behalf of the state of Idaho, and the Board of Regents, on behalf of the University of Idaho, (hereinafter collectively referred to as the ~~State~~ “Board”) recognize the dynamic relationship between research and education in postsecondary educational institutions. The ~~State~~ Board recognizes that ~~the~~ inventions, discoveries and published works of commercial importance may be the natural outgrowth of research. The ~~State~~ Board intends to promote the use of intellectual properties for the public good. While postsecondary educational institutions must remain open to intellectual inquiry, at times this openness is juxtaposed with the obligations to contribute to the economic growth and development of Idaho and the nation. The following intellectual property policies balance the institutional obligations to preserve open inquiry and realize the commercial value of intellectual property produced by employees of ~~the State's~~ Idaho's postsecondary educational institutions.

2. Intellectual Property

a. Definition. Intellectual property includes, but is not limited to, any invention, discovery, creation, know-how, trade secret, technology, scientific or technological development, plant variety, research data, mark, design, mask work, work of authorship, and computer software regardless of whether subject to protection under patent, trademark, copyright or other laws.

b. Claim of ownership interest. The ~~State Board of Education~~, on behalf of the state of Idaho, through and by Idaho's postsecondary educational institutions under the governance of the Board (hereinafter referred to as “institutions”) ~~and the Board of Regents, on behalf of the University of Idaho,~~ claims ownership of any ~~invention or patentable discovery~~ intellectual property developed under any of the following circumstances:

- (1) Arising from any work performed by an employee of ~~the State Board~~ any institution during the course of his duties to the ~~agency or~~ institution;
- (2) Arising from any work performed by an employee of ~~the State Board~~ an institution or other individual, using ~~state~~ Board resources not similarly available to members of the general public; or
- (3) Arising from any work performed by an employee of ~~the State Board~~ an institution under contract in a program or project sponsored by ~~a State Board agency or an~~ institution or between institutions or a closely related research foundation.

~~September 2009~~ October 2010

~~cb.~~ Disclaimer of ownership interest. The ~~State Board of Education and the Board of Regents of the University of Idaho~~ claims s no ownership interest in any ~~invention or patentable discovery~~ intellectual property developed by the employees or contractors of an institution under the following circumstances:

- (1) When the work is performed outside their assigned duties of the employee/contractor; and
- (2) When the employee/contractor is without benefit of State of Idaho facilities except those available to members of the general public; (such as libraries).

~~dc.~~ Policy review. ~~— Agencies and institutions under the governance of the State Board must secure to the state of Idaho their ownership interest in inventions and patentable discoveries. Agency and i~~ Institutional policies setting out patent technology transfer administration, including evaluating, financing, assignment, marketing, protection, and the division and use of royalties, as well as amendments thereto, must be submitted to the ~~State~~ Board for its review and approval.

~~ed.~~ Condition of employment - ~~State Board~~ Institution employees and contractors must, as a condition of employment ~~or~~ f contract, agree and adhere to the ~~State~~ Board approved policy on ~~inventions and patentable discoveries~~ intellectual property.

3. Copyrights

- a. Notwithstanding Section 2 of this Policy, When institution employees/~~or~~ contractors are expressly directed to produce specific work for publication, performance or display in the course of their employment duties, the ~~agency or~~ institution may reserve the right to copyright the publication in the name of the state of Idaho or the ~~University of Idaho~~ institution or to publish such work without copyright.
- b. Notwithstanding Section 2 of this Policy, Except as noted in 3.a. above, neither the ~~State Board of Education nor any institution and the Board of Regents of the University of Idaho~~ claims an ~~no~~ ownership interest in works submitted for publication, performance or display by ~~State~~ Board employees/~~and~~ contractors. Employees/~~and~~ contractors retain the right to copyright and publish their own works. That is, as a general rule, all rights to copyrightable material are the property of the creator. The distribution of royalties, if any, is a matter of arrangement between the creator and ~~his~~ their publishers or licensees. However, institutions subject to this ~~rule~~ Policy may elect, by contract or institutional policy, to claim an interest in copyrightable material produced, in whole or part, by their employees or contractors. For example, different treatment may be accorded by an institution in circumstances including but not limited to the following:

~~September 2009~~ October 2010

- (1) ~~i~~n cases of specific contracts providing for an exception,
- (2) ~~i~~n cases where the constituent institution or sponsor may employ personnel for the purpose of producing a specific work,
- (3) ~~W~~here different treatment is deemed necessary to reflect the contribution of the institution to the work ~~as in the case of software, mask works for microcircuit chips, or audiovisual material~~, or
- (4) ~~W~~here a sponsored agreement requires otherwise.

4. Intellectual Property Transfer

- a. The ~~State Board of Education and the Board of Regents of the University of Idaho~~ delegates to Idaho's postsecondary educational ~~the~~ institutions the right to transfer, ~~and~~ convey, license or disclaim ownership rights in intellectual properties developed within ~~the each respective~~ institutions ~~under the patents and copyright rule~~ this Policy. This ~~rule~~ Policy will ~~allow~~ the institutions to ~~play appropriate roles in effect~~ knowledge transfer and economic growth and development. Under this ~~rule~~ Policy, ~~the each respective~~ institutions may:
 - (1) Grant ~~rights to owned~~ any or all intellectual property ~~rights~~ ies to research foundations for further development or transfer.
 - (2) ~~Themselves as~~ Act as ~~licensors~~ to convey any or all intellectual property rights to ~~commercial ventures~~ for-profit, non-profit, and/or governmental entities.
 - (3) Grant exclusive intellectual property rights to for-profit, non-profit, and/or governmental entities ~~a licensee~~.
 - (4) Collect and disburse license payments in accordance with institutional policy to inventors and their departments and colleges, as well as to their institutions, ~~for the general support of research within the institutions~~.
 - (5) Permit institutional employees the right to participate in ownership and governance of for-profit, non-profit, and/or governmental entities ~~companies that~~ licensed ~~by the~~ institutions al intellectual property to produce and market the ~~discoveries~~ intellectual property, provided the conflict of interest rules are followed.
- b. Each ~~of Idaho's postsecondary~~ institutions shall, within twelve (12) months of the promulgation of this ~~rule~~ Policy, submit its institutional policy on ~~the transfer of intellectual properties (technology transfer)~~ for ~~State~~ Board review and approval. At a minimum, the policy shall ~~ould~~ include:

~~September 2009~~ October 2010

- (1) The name of the institutional position (or office) with the authority and responsibility for carrying out the policy and binding the institution contractually.
 - (2) Policy and plans for patent acquisition (i.e., who initiates, who pays the lawyers, and an enumeration of the duties, responsibilities, and a process for settling debates).
 - (3) The range of allowable institutional involvement in the transfer process (i.e., from licensing to acceptance of institutional ownership interests, continued development in institutional facilities for the benefit of the licensee, business planning or production assistance).
- c. At the request of the Board ~~The~~ the appropriate officer of each ~~postsecondary~~ institution shall report, ~~two (2) weeks in advance of the State Board meeting,~~ on ~~patent, copyright, and~~ technology transfer activities that have occurred at the institution. ~~since the prior meeting of the Board. With respect to patents, the report shall include what public notice was given prior to the licensee(s) being selected. Further, that~~ The report ~~shall~~ will also indicate whether any employees of the institution or its respective research foundation have a financial interest in the ~~company entity~~ to which the intellectual property ~~rights were~~ was transferred conveyed. Terms of any license or technology transfer contract will be made available in confidence upon request for inspection by the ~~State~~ Board.

September 10, 2010

Idaho State Board of Education
P.O. Box 83720
Boise, Idaho 83720-0037

Re: Idaho State Board of Education Governing Policies and Procedures
Section: V. Financial Affairs
Subsection: M. Intellectual Property

Dear Members of the Board,

I am writing to you in support of the proposed modifications to the Idaho State Board of Education Governing Policies and Procedures referenced above.

The proposed modifications clarify two issues important to potential business partnerships between Idaho's institutions of higher education and industry. First, the modifications clarify that each institution claims rights in intellectual property. This clarifies that each institution, on behalf of the State Board of Education, is its own repository of intellectual property assets. The second modification clarifies the institution's authority to manage those intellectual property assets. These two important clarifications; who 'owns' the intellectual property and what authority the owner has to manage the intellectual property, are two fundamental issues for university and industry partnerships.

To grow and succeed in any industry we must foster innovation and enable entrepreneurship activity within existing Idaho companies and stimulate the generation of new enterprise. Idaho institutions of higher education are a source of innovation with potential commercial and social value. One way to realize this potential value and contribute to the economic growth and development in Idaho is through industry and university partnerships such as the ones this intellectual property policy facilitates. The proposed modifications to the Governing Policies and procedures achieve the intention as described in the Policy, 'to promote the use of intellectual properties for the public good.'

I support the proposed modifications as submitted for your consideration.

Sincerely yours,

Tom Kealey, Venture Partner

Montlake Capital, LLC; Boise, Idaho

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September 8, 2010

Idaho State Board of Education
P.O. Box 83720
Boise, Idaho 83720-0037

Re: Idaho State Board of Education Governing Policies and Procedures
Section: V. Financial Affairs
Subsection: M. Intellectual Property

Dear Members of the Board,

It is my pleasure to write in support of the proposed modifications to the Idaho State Board of Education Governing Policies and Procedures referenced above. The proposed modifications clarify two issues important to potential business partnerships between Idaho's institutes of higher education and industry. First, the modifications clarify that each institution claims rights in intellectual property. This clarifies that each institution, on behalf of State Board of Education, is its own repository of intellectual property assets. The second modification clarifies the institution's authority to manage those intellectual property assets. These two important clarifications; who 'owns' the intellectual property and what authority the owner has to manage the intellectual property, are two fundamental issues for industry university partnerships.

To grow and succeed in any industry we must foster innovation and enable entrepreneurship activity within existing Idaho companies and stimulate the generation of new enterprise. Idaho institutes of higher education are a source of innovation with potential commercial and social value. One way to realize this potential value and contribute to the economic growth and development in Idaho is through industry that the university partnerships such as the ones this intellectual property policy facilitates. The proposed modifications to the Governing Policies and procedures achieve the intention as described in the Policy, 'to promote the use of intellectual properties for the public good.'

In summary, I enthusiastically support the proposed modifications as submitted for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ward Parkinson', followed by a long horizontal flourish.

Ward Parkinson, V.P.
Patent Attorney
Ovonyx, Inc.
300 Main St., #111
Boise, ID 83706
208-850-5577
wparkins@aol.com

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September 28, 2010

Idaho State Board of Education
P.O. Box 83720
Boise, Idaho 83720-0037

Re: Idaho State Board of Education Governing Policies and Procedures
Section: V. Financial Affairs
Subsection: M. Intellectual Property

Dear Members of the Board,

We are pleased to write on behalf of the Idaho Technology Council and its Research and Development Committee in support of the proposed modifications to the Idaho State Board of Education Governing Policies and Procedures referenced above. We strongly support the effort to revise the intellectual property policy of the State Board of Education.

The Idaho Technology Council is dedicated to fostering the growth of technology companies in the state of Idaho. We believe the proposed modifications to the intellectual property policy will further our mission, as well as help to achieve the stated objective of the State Board of Education to promote the use of intellectual property for the public good.

Indeed, we believe that further changes to the intellectual property policy may be warranted in the future, and we would welcome the opportunity to work with the State Board of Education to recommend possible additional changes to the policy. In the meantime, we believe the proposed modifications as submitted for your consideration represent a positive step in the right direction, and we recommend that these proposed modifications be adopted.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Richard Raimondi'.

Richard Raimondi
Chairperson
Idaho Technology Council

A handwritten signature in blue ink, appearing to read 'Peter Midgley'.

Peter Midgley
Chairperson
ITC Research and Development Committee

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

SUBJECT

Differential Fees policy – first reading

REFERENCE

September 2001	Board authorizes UI to bring a proposal to the Board to implement differential fees on a limited basis.
March 2002	UI asks Board for additional time to talk about the issue with students and other stakeholders, and bring a proposal back at a later date.
October 2008	Institutions request direction from the Board whether there is support for a mechanism to request differential fees by the college or universities. Board directs staff to bring forward an amendment to Board Policy V.R.3., adding differential fees.
June 2010	Information Item to seek Board guidance on next steps for differential fees policy.
August 2010	Draft policy and proposal brought for Board review.

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.R.3.b.

BACKGROUND / DISCUSSION

At the August 12, 2010 meeting the Board reviewed a draft differential fee policy and a draft differential fee program proposal. Several Board members expressed concern that the draft policy set a “low bar” and was not sufficiently differentiating. Following the August meeting, staff solicited comments and suggestions from Board members. One Board member expressed a desire for a policy that “screens” and defines truly high quality, high value and high cost programs. In other words, it needs to cost more to provide the program and graduates need to be able to earn more. Another member stated that the Board has to be very careful about defining how differential fees are established and what are the limits of their application. In general, the concern with differential fees is the possibility that every program will be asking for them once they are established. Almost any college or department within an institution could make the argument that their program deserves differential fees simply because the fees would allow for a “higher quality” program.

In light of these comments and concerns, staff tightened up the proposed policy by clarifying the scope and intent of differential fees, and adding several additional requirements to be submitted with any proposal for differential fees.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

- Differential fees are intended to maintain or enhance high quality programs and: (1) offset demonstrably higher than average instructional costs; and/or (2) reflect the market pricing for programs with high demand.
- Differential fees will be a fixed amount in the form of a per credit or per course fee.
- If a differential fee is approved, all existing course fees will be eliminated except those which cover identified consumables associated with a specific course.
- Provide projected revenue from the fee with enrollment assumptions.
- Address how the fee will impact program access and affordability.
- Identify the premium in program quality and how the fees will positively the quality of the learning experience for students.
- For high cost programs, identify program costs for preceding three years and clearly demonstrate the cost exceeds available funding.
- For high demand program, quantify program demand, demonstrate market demand, and address elasticity of demand.
- Student Consultation and Support: All differential fees plans must show evidence of consultation with students who will be affected, both via student representative groups and the annual fee hearings process.
- Revenue generated from differential fees will be tracked and accounted for separately, and may only be expended for activities directly related to the program with which the fee is associated.

IMPACT

While assessment of differential fees would clearly have an added financial impact on students, the net fiscal burden will depend on each individual proposal. As noted above, institutions would be required to address how a proposed fee would place limitations on program access and affordability.

ATTACHMENTS

Attachment 1- Section V.R.3.b.vi. – Differential Fees – First Reading Page 5

STAFF COMMENTS AND RECOMMENDATIONS

The concept of differential fees is not new to the Board. In 2001, the University of Idaho brought forward a proposal for its Integrated Business Curriculum as a test case for differential fees, but the proposal was ultimately withdrawn. The concept resurfaced in October 2008 when the Board voted to direct staff to bring forward an amendment to Board Policy adding differential fees. The proposed policy amendment for the Board's consideration is the culmination of two years worth of discussions and drafts on this issue.

At its most basic level, the institutions represent that they would like the ability to fund high cost, high quality programs without taking additional funding from their base educational mission. In other words, low cost programs already subsidize the high cost programs, but declining state funding exacerbates the need for subsidization in order to maintain program access and quality.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

The rationale for differential fees is often linked to the high cost of instruction intrinsic to certain disciplines, and/or the “ability to pay”.¹ With regard to the first rationale, an argument could be made that cost differentials are already built into the program weights as a part of the Enrollment Workload Adjustment (EWA) formula. Unfortunately, the EWA is seldom consistently and fully funded by the State. As a result, institutions which experience steady enrollment growth usually do not receive commensurate funding increases from the State. Regarding the latter rationale, some interpret “ability to pay” to mean future earning potential. There is always the risk, however, that imposing higher fees on programs with higher earning potential will begin to artificially limit access to those affluent enough to pay the fee in the first place. An additional concern is that many of the high cost programs are within the STEM disciplines. It may strike some as counter-productive to advocate and encourage more students to pursue STEM degrees while assessing a higher fee on some of those very same programs.

To address potential access issues created by differential fees, some states require that a percentage of the fee be set aside for need-based financial aid for students enrolled in the program(s) for which a differential fee is assessed. This concept was discussed among BAHR and the financial vice presidents early in the process, but ultimately it was decided to not include a financial aid component in the proposed policy. There was a concern that a financial aid set-aside would be complicated and burdensome to administer (e.g. financial aid changes with each course add/drop).

Pursuant to the Board’s directive from October 2008, staff has worked closely with BAHR and institutional staff to craft a differential fee policy which attempts to balance the duties and desires of the Board, the fiscal impact on students and the needs of the institutions. Staff has identified several of the policy and philosophical issues surrounding differential fees for the Board’s consideration.

BOARD ACTION

I move to approve the first reading of proposed amendments to Board Policy Section V.R.3.b.vi, Differential Fees as presented.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

¹ In September 2001, each institution prepared a “Statement Response to Differential Fees.” In the interest of full and fair disclosure, this analysis borrows from some of the points raised in those documents. See <http://www.boardofed.idaho.gov/meetings/board/archive/2001/09-20-01/irsa.pdf>

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R. Establishment of Tuition and Fees

1. Board Policy on Student Tuition and Fees

Consistent with the Statewide Plan for Higher Education in Idaho, the institutions shall maintain tuition and fees that provide for quality education and maintain access to educational programs for Idaho citizens. In setting fees, the Board will consider recommended fees as compared to fees at peer institutions, percent fee increases compared to inflationary factors, fees as a percent of per capita income and/or household income, and the share students pay of their education costs. Other criteria may be considered as is deemed appropriate at the time of a fee change. An institution cannot request more than a ten percent (10%) increase in the total full-time student fee unless otherwise authorized by the Board.

2. Tuition and Fee Setting Process – Board Approved Tuition and Fees

a. Initial Notice

A proposal to alter student tuition and fees covered by Subsection V.R.3. shall be formalized by initial notice of the chief executive officer of the institution at least six (6) weeks prior to the Board meeting at which a final decision is to be made.

Notice will consist of transmittal, in writing, to the student body president and to the recognized student newspaper during the months of publication of the proposal contained in the initial notice. The proposal will describe the amount of change, statement of purpose, and the amount of revenues to be collected.

The initial notice must include an invitation to the students to present oral or written testimony at the public hearing held by the institution to discuss the fee proposal. A record of the public hearing as well as a copy of the initial notice shall be made available to the Board.

b. Board Approval

Board approval for fees will be considered when appropriate or necessary. This approval will be timed to provide the institutions with sufficient time to prepare the subsequent fiscal year operating budget.

c. Effective Date

Any change in the rate of tuition and fees becomes effective on the date approved by the Board unless otherwise specified.

3. Definitions and Types of Tuition and Fees

The following definitions are applicable to tuition and fees charged to students at all of the state colleges and universities, except where limited to a particular institution or institutions.

a. General and Professional-Technical Education Tuition and Fees

Tuition and fees approved by the State Board of Education. Revenues from these fees are deposited as required by Section V, Subsection Q.

i. Tuition – University of Idaho

Tuition is defined as the fee charged for the cost of instruction at the University of Idaho. The cost of instruction shall not include those costs associated with the construction, maintenance, and operation of buildings and facilities, student services; or institutional support, which are complementary to, but not a part of, the instructional program. Tuition may be charged only to nonresident students enrolled in the University of Idaho, or to resident students enrolled in the University of Idaho who are in a professional program, college, school, or department approved by the State Board of Education and the Board of Regents of the University of Idaho; who are taking extra studies; or who are part-time students at the institutions.

ii. Matriculation Fee – University of Idaho

Matriculation fee is defined as the fee charged at the University of Idaho for all educational costs other than the cost of instruction, including, but not limited to, costs associated with the construction, maintenance, and operation of buildings and facilities, student services, and institutional support.

iii. Tuition – Boise State University, Idaho State University, Lewis-Clark State College

Tuition is defined as the fee charged for any and all educational costs at Boise State University, Idaho State University, and Lewis Clark State College. Tuition fees include, but are not limited to, costs associated with academic services; instruction; the construction, maintenance, and operation of buildings and facilities; student services; or institutional support.

iv. Professional-Technical Education Fee

Professional-Technical Education fee is defined as the fee charged for educational costs for students enrolled in Professional-Technical Education pre-employment, preparatory programs.

v. Part-time Credit Hour Fee

Part-time credit hour fee is defined as the fee per credit hour charged for educational costs for part-time students enrolled in any degree program.

vi. Graduate Fee

Graduate fee is defined as the additional fee charged for educational costs for full-time and part-time students enrolled in any post- baccalaureate degree-granting program.

vii. Western Undergraduate Exchange (WUE) Fee

Western Undergraduate Exchange fee is defined as the additional fee for full-time students participating in this program and shall be equal to fifty percent (50%) of the total of the tuition fee, matriculation fee, facility fee, and activity fee.

viii. Employee/Spouse Fee

The fee for eligible participants shall be a registration fee of twenty dollars (\$20.00) plus five dollars (\$5.00) per credit hour. Eligibility shall be determined by each institution. Employees at institutions and agencies under the jurisdiction of the Board may be eligible for this fee. Special course fees may also be charged.

ix. Senior Citizen Fee

The fee for Idaho residents who are 60 years of age or older shall be a registration fee of twenty dollars (\$20.00) plus five dollars (\$5.00) per credit hour. This fee is for courses on a space available basis only. Special course fees may also be charged.

x. In-Service Teacher Education Fee

The fee shall be one-third of the average part-time undergraduate credit hour fee or one-third of the average graduate credit hour fee. This special fee shall be applicable only to approved teacher education courses. The following guidelines will determine if a course or individual qualifies for this special fee.

- (a) The student must be an Idaho public school teacher or other professional employee of an Idaho school district.
- (b) The costs of instruction are paid by an entity other than an institution.
- (c) The course must be approved by the appropriate academic unit(s) at the institution.
- (d) The credit awarded is for professional development and cannot be applied towards a degree program.

xi. Workforce Training Credit Fee

This fee is defined as a fee charged students enrolled in a qualified Workforce Training course where the student elects to receive credit. The fee is charged for processing and transcribing the credit. The cost of delivering Workforce Training courses, which typically are for noncredit, is an additional fee since Workforce Training courses are self-supporting. The fees for delivering the courses are retained by the technical colleges. The Workforce Training fee shall be \$10.00 per credit.

b. Institutional Local Fees – Approved by the Board

Institutional local fees are both full-time and part-time student fees that are approved by the State Board of Education and deposited into local institutional accounts. Local fees shall be expended for the purposes for which they were collected.

The facilities, activity and technology fees shall be displayed with the institution's tuition and fees when the Board approves tuition and fees.

i. Facilities Fee

Facilities fee is defined as the fee charged for capital improvement and building projects and for debt service required by these projects. Revenues collected from this fee may not be expended on the operating costs of the general education facilities.

ii. Activity Fee

Activity fee is defined as the fee charged for such activities as intercollegiate athletics, student health center, student union operations, the associated student body, financial aid, intramural and recreation, and other activities which directly benefit and involve students. The activity fee shall not be

charged for educational costs or major capital improvement or building projects. Each institution shall develop a detailed definition and allocation proposal for each activity for internal management purposes.

iii. Technology Fee

Technology fee is defined as the fee charged for campus technology enhancements and operations.

iv. Professional Fees

To designate a professional fee for a Board approved program, *all* of the following criteria must be met:

(a) Credentialing Requirement:

- 1) A professional fee may be assessed if graduates of the professional program obtain a specialized higher education degree that qualifies them to practice a professional service or to be eligible for credentialing or licensing to practice a professional service.
- 2) The program leads to a degree that is at least the minimum required for entry to the practice of a profession.

(b) Accreditation Requirement (if applicable): The program meets the requirements of national/specialized/professional accrediting agencies as defined by the State Board of Education.

(c) Extraordinary Program Costs: The cost of the professional program significantly exceeds the cost of nonprofessional programs at the institution. Institutions will be required to provide documentation to support the reported cost of the program.

Institutions will propose professional fees for Board approval based on the costs to deliver the program.

v. Self-Support Certificate and Program Fees

Self-support certificates and programs are a defined set of specific courses that must all be successfully completed in order to earn the certificate. Such programs must be encapsulated, separate and distinct from the regular courses of the institution. Institutions may offer self-support certificates and programs if the fees assessed cover all costs of the program and no appropriated funds are used to support the program. In addition, students pay a fee for the entire program and may not enroll for program courses on an individual course-by-course basis. Students enrolled in the self-support

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

ATTACHMENT 1

SECTION: V. FINANCIAL AFFAIRS

Subsection: R. Establishment of Fees

~~September-December 2009~~10

programs may take courses outside of the program as long as they pay the required tuition and fees for those courses. Institutions will establish such fees on an individual program basis according to anticipated expenditures. Self-support certificate and program fees are retained by the institution.

vi. Differential Fees

(a) Differential fees are defined as additional fees on the basis of specified criteria that are supplementary to the base state appropriation, tuition, and fees for a specific academic program (as defined in III.G.2.a(1)(a)). Differential fees are intended to maintain or enhance high quality programs and:

- 1) offset demonstrably higher than average instructional costs; and/or
- 2) reflect the market pricing for programs with high demand.

(b) Differential fees shall be in the form of a per credit or per course fee and shall not be tied by percentage or multiplier to any existing fee, including but not limited to, tuition or student fees.

(c) Upon the approval and establishment of a differential fee, all existing course fees associated with the same program shall be eliminated, except those that are designated to cover the cost of identified consumables associated with a specific course.

(d) As provided below, institutions may request Board approval for differential fees at either the undergraduate or graduate level. Institutions requesting Board approval of differential fees shall develop a proposal addressing the following criteria:

- 1) The expected resulting revenue must be provided for the first year of the program, based on an increase over current year tuition rates. If the proposal is a phased-in initiative, a projection must be made for the build-out of the fee, cumulating prior year increases. Enrollment assumptions should be clearly identified and defensible.
- 2) Address limitations on program access and affordability. The proposal shall include a college advising process that enables the student to anticipate future cost increases and (if necessary) seek additional aid to cover the differential amount over base tuition and fees.
- 3) Evidence that demonstrates the differential fee plan proposal would result in student costs that are comparable to the student cost for

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

ATTACHMENT 1

SECTION: V. FINANCIAL AFFAIRS

Subsection: R. Establishment of Fees

~~September-December 2009~~10

similar programs at other institutions such that the institution will not be disadvantaged in attracting students. At a minimum, the institution shall provide tuition and fee data from each of its Board-approved peer institutions which charge differential fees for a comparable program.

- 4) Identify all existing special course fees associated with the program, indicating those that will be eliminated.
- 5) Include specific information to identify the premium in program quality, and specify how such fees will positively impact the quality of the learning experience for the student. Inclusion of independent and objective qualitative analysis of the program is preferred.
- 6) For high cost programs, indicate total annual program costs in relation to total program revenues and expenditures for the preceding three fiscal years. Clearly demonstrate that the cost necessary to operate the program exceeds the funding provided through base appropriated funds, tuition and fees. For example, provide evidence that the program requires markedly higher than average expenditures for faculty, staff and/or equipment.
- 7) For high demand programs: (i) quantify program demand by including program enrollments for the preceding three academic years; (ii) market-based information should be provided to demonstrate that employment opportunities support the higher price; (iii) describe how the proposed tuition level may impact overall student demand for the program and how such changes in demand fit with the institution's overall enrollment management target and goals; and (iv) address the elasticity of the program's demand.
- (e) Differential fee proposals shall show evidence of consultation with affected students both through student representative groups and the annual campus student tuition and fee hearings process, and how student comments were addressed.
- (f) Funds generated from a differential fee shall be tracked and accounted for separately. For example, an institution could maintain a separate local fee account at the college or department level.
- (g) Funds generated from a differential fee shall only be expended on goods and services directly related and beneficial to the program with which the fee is associated, including but not limited to, salaries and benefits, operating expenses and capital outlay.

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

ATTACHMENT 1

SECTION: V. FINANCIAL AFFAIRS

Subsection: R. Establishment of Fees

~~September-December~~200910

(h) Differential fee revenue is intended to be additive to base funding for the approved program(s). An approved program's receipt of differential fee revenue is not, in and of itself, a permissible basis upon which an institution may justify a reduction to an approved program's base appropriation. It is conceivable, however, that budget reductions to an institution's appropriation could ultimately result in a decrease to an approved program's base appropriation.

(i) Upon request by the Board or its staff, each institution with approved differential fees shall submit a written report to the Office of the State Board of Education with program base funding, differential fee revenue, actual expenditures of differential fee programs, and an explanation of how the fees have been used for the benefit of the academic program for which the fee was established.

vii. Contracts and Grants

Special fee arrangements are authorized by the Board for instructional programs provided by an institution pursuant to a grant or contract approved by the Board.

viii. Student Health Insurance Premiums or Room and Board Rates

Fees for student health insurance premiums paid either as part of the uniform student fee or separately by individual students, or charges for room and board at the dormitories or family housing units of the institutions. Changes in insurance premiums or room and board rates or family housing charges shall be approved by the Board no later than three (3) months prior to the semester the change is to become effective. The Board may delegate the approval of these premiums and rates to the chief executive officer.

c. Institutional Local Fees and Charges Approved by Chief Executive Officer

These local fees and charges are assessed to support specific activities and are only charged to students that engage in these particular activities. Local fees and charges are deposited into local institutional accounts and shall only be expended for the purposes for which they were collected.

i. Continuing Education

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

ATTACHMENT 1

SECTION: V. FINANCIAL AFFAIRS

Subsection: R. Establishment of Fees

~~September-December~~200910

Continuing education fee is defined as the additional fee to part-time students which is charged on a per credit hour basis to support the costs of continuing education.

ii. Course Overload Fee

This fee may be charged to full-time students with excessive course loads as determined by each institution.

iii. Special Course Fees or Assessments

A special course fee is a fee required for a specific course or special activity and, therefore, not required of all students enrolled at the institution. Fees such as penalty assessments, library fines, continuing education fees, parking fines, laboratory fees, breakage fees, fees for video outreach courses, late registration fees, and fees for special courses offered for such purposes as remedial education credit that do not count toward meeting degree requirements are considered special course fees. All special course fees or penalty assessments, or changes to such fees or assessments, are established and become effective in the amount and at the time specified by the chief executive officer of the institution. The chief executive officer is responsible for reporting these fees to the Board upon request.

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

ATTACHMENT 1

SECTION: V. FINANCIAL AFFAIRS

Subsection: R. Establishment of Fees

~~September-December~~200910

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

IDAHO STATE UNIVERSITY

SUBJECT

Approval of Gift Agreement and naming facility; approval of deed restriction for "Beverly Bistline Park at Idaho State University"

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies and Procedures Section I.K. and Section V.I.

BACKGROUND/DISCUSSION

Beverly Bistline has been a major donor to the University over the years. She has made multi-million dollar contributions to the Stephens Performing Arts Center and has established or contributed to major student scholarship funds, including, for example, endowing scholarships for students planning to attend law school upon obtaining an undergraduate degree from Idaho State University (ISU).

As reflected in the Gift Agreement which is submitted for the Board's consideration, Ms. Bistline wishes to transfer a valuable parcel of property, approximately 13 acres, to the ISU Foundation, subject to certain conditions. The Foundation intends to sell or exchange the property for the benefit of the University. The proceeds are unrestricted and may be applied to student scholarships, pay down of debt on the Performing Arts Center or to other pressing University needs. In recognition of the transfer and Ms. Bistline's generous contributions to the University over the years, the University desires to name and designate an open area situated in the foothills northeast of its main Pocatello campus the "Beverly Bistline Park at Idaho State University" (the "Park").

The Park property consists of approximately 78 acres of land which was previously received by the University as part of a larger exchange (93 acres) several years ago. It is largely hillside land which is not developable due to the steep grades and gullies throughout. The potentially developable portion of the 93 acre parcel will be excluded when a survey is completed. The Park is currently being used by the University as a Frisbee golf course, and has been recognized nationally as a challenging and competitive course. It is maintained through efforts of various volunteer organizations. If the Board approves, the Park would be named as noted above and the University would agree to a deed restriction which would require it to maintain the Park as an open recreational space for such activities as disk golf, hiking, biking, for ISU students, faculty, staff and the community. If the University later chooses to discontinue its use and maintenance of the Park property, to honor the wishes of the donor the University would first offer to sell or exchange the Park to the City of Pocatello or Bannock County for continuing use consistent with the recreational uses noted herein. If the city or the county decline the offer, then the University may sell the Park

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

property and pay (in its discretion) the Donor or the Pocatello Greenway Foundation or the City of Pocatello, \$125,000 to be used for park land acquisition, or to otherwise set aside other University land for a similar purpose. The \$125,000 represents the current appraised value of the 13 acre parcel as currently zoned. While the 13 acre parcel is a separate transaction and not part of the Park property, the University and donor used its appraised value as the value of the restricted use of the Park property.

IMPACT

If approved, the Foundation will accept a 13 acre parcel, and in turn the University will impose a deed restriction on University property and name the property after a major donor.

ATTACHMENTS

Attachment 1 – Gift Agreement & Exhibit A	Page 3
Attachment 2 – Exhibit B	Page 9
Attachment 3 – Appraisal	Page 11

STAFF COMMENTS AND RECOMMENDATIONS

This transaction involves a transfer of real property to the Idaho State University Foundation as a gift in part and in exchange for value in the form of a deed restriction on University owned real property as open recreational space. In recognition of the gift, the University seeks to name the open space in honor of the donor.

The real property to be transferred to the foundation has an appraised value of \$125,000 as currently zoned (residential low density). If, however, the property were rezoned as residential commercial professional, the appraised value is estimated at \$1.2 million.

Staff recommends approval.

BOARD ACTION

I move to approve the Gift Agreement as presented, which includes acceptance by the Idaho State University Foundation of a 13 acre parcel, a deed restriction on university-owned real property, and the naming of said property the “Beverly Bistline Park at Idaho State University.”

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GIFT AGREEMENT

This Agreement is entered into by Beverly Bistline (“Donor”), the Idaho State University Foundation, Inc. (“ISUF”), and Idaho State University (“ISU”) on the _____ day of _____, 2010.

RECITALS

- A. Donor desires to transfer the property described in the attached Exhibit A (the “Property”) to ISUF as a gift in part and in part in exchange for value in the form of restricting, as described herein, the use of the ISU property, currently consisting of an eighteen hole Frisbee golf course, as illustrated in the attached Exhibit B (the “Park”). ISU will have a survey conducted, and a formal legal description will be substituted for Exhibit B, when completed.
- B. ISUF desires to accept such transfer and, to the extent such transfer is a gift and as a sign of appreciation, ISU agrees to use its best efforts to secure approval of the State Board of Education (the “State Board”), in accordance with State Board policy, to name the Park the “Beverly Bistline Park at Idaho State University”
- C. ISU desires to recognize the generous and valuable contributions of Donor to ISU and the ISU community and, as the owner of the Park, desires to facilitate the transfer of the Property to ISUF. To the extent that there is exchange for value as set forth herein, ISU agrees to use its best efforts to secure State Board approval to maintain the Park as an open recreational space for such activities as disk golf, hiking, biking, and as a place for ISU students, faculty, staff and the community to enjoy similar outdoor activities and to secure such use in perpetuity through deed restriction or some other means recordable with the Bannock County Recorder’s Office.
- D. As described above, ISU, as the owner of the Park, desires to facilitate this transfer as described herein and perceives that in doing so it is not materially altering the value of the land comprising the Park both because ISU has no current intention for using the Park for any purpose other than as a public space, and based upon existing zoning and building ordinances, has no reason to conclude that the Park will ever have a higher value than for use as public open space.
- E. The parties desire to memorialize these recitals in this Agreement.

AGREEMENT

Therefore, incorporating the foregoing Recitals, and in consideration of the mutual agreements contained herein, the parties agree as follows:

- 1. Donor hereby agrees to transfer the Property by warranty deed to ISUF, without restriction and to be used by ISUF at its sole discretion.

2. ISUF will pay all costs associated with transferring the Property to ISUF, including an ATLA title insurance policy on the Property in favor of ISUF. ISUF will accept the property subject to receiving a satisfactory title report and insurance, and the environmental survey described below. If the title report, insurance, or environmental survey are not satisfactory to ISUF or ISU, either ISUF or ISU may terminate this Agreement by giving written notice to Donor and returning the Property to Donor if already transferred.
3. ISUF will pay for a Phase I environmental survey and a Phase II survey, if warranted by the Phase I survey.
4. Donor represents, warrants, and covenants to the other parties that:
 - a. Donor has fee simple title to the Property;
 - b. The Property is currently in compliance with all city, local, state and federal requirements pertaining to the Property;
 - c. Except as disclosed in the ATLA commitment for title insurance purchased by Donor, there are no encroachments, easements, or rights-of-way pertaining to the Property or any part of the Property;
 - d. All taxes required to be paid by Donor with respect to the Property have been fully paid or will be fully paid on or prior to the transfer of the Property to ISUF;
 - e. No labor has been performed or materials delivered to or for the Property, the cost of which has not been fully paid or which will not be fully paid on or prior to the transfer of the Property to ISUF;
 - f. To the best of Donor's knowledge, there are no, and there have not been, hazardous substances or materials located, generated, released, or stored on or under the Property in violation of any applicable law or regulations, and Donor hereby indemnifies and holds harmless ISUF from and against all claims, damages, or causes of action that may arise therefrom;
 - g. No litigation, administrative, zoning or other proceeding is pending, outstanding or threatened relating to the Property or any portion thereof.
5. ISU represents that it is the fee simple owner of the Park property, and that said property is maintained by various volunteer individuals and organizations, and that it intends to continue maintaining the property in the same manner in the foreseeable future.

6. The foregoing representations, warranties and covenants will be remade as of the date of the transfer of the Property by warranty deed to ISUF and shall survive such transfer.
7. The parties will cooperate in complying with all applicable policies and requirements pertaining to the acceptance of real property gifts by ISUF and the naming of ISU properties.
8. In recognition of the valuable and generous contributions of Donor to ISU and the community over the years, ISU agrees to use its best efforts to obtain approval of the State Board to name the Park the “Beverly Bistline Park at Idaho State University.” ISU also agrees to use its best efforts to obtain State Board approval to maintain the Park as an open space park for such activities as disk golf, hiking, biking, and as a place for the enjoyment of ISU students, faculty, staff and the community and to secure such use in perpetuity through deed restriction or some other means recordable with the Bannock County Recorder’s Office, which restriction will be subject to the following terms.
 - a. The Park will not be sold, leased or transferred by ISU to any person or entity without first offering the Park for sale or exchange to the City of Pocatello or Bannock County for the uses described herein.
 - b. If the City of Pocatello or Bannock County declines such offer for sale or exchange, the Park may be sold without the restriction on use described above, provided that, if the Park is sold without such restriction, ISU agrees, in its discretion, to pay the sum \$125,000 to Portneuf Greenway Foundation for use in land acquisition or if the Portneuf Greenway Foundation should not exist then to the City of Pocatello for use in public park land acquisition or put similar property owned or acquired by ISU to use as an open space park subject to the same recorded restrictions to be used for such activities as disk golf, hiking, biking, and as a place for the enjoyment of ISU students, faculty, staff and the community.
9. If the State Board of Education does not approve the deed restriction or other recordable means of securing the use of the Park described above, then:
 - a. If ISUF has sold, or entered into an agreement to sell, the Property prior to notification of the State Board’s decision, then immediately or upon closing, as the case may be, it shall pay to Donor an amount equal to the proceeds from such sale, less the costs of the environmental surveys, title report and title insurance described above, but in no event shall the amount paid to Donor exceed \$125,000. For example, if the Property sold for \$250,000 and the costs of the environmental surveys, title report, and title insurance equaled \$5,000, ISUF would pay the sum \$125,000 to Donor and would retain the remaining proceeds for use by ISUF without restriction. If, alternatively, the Property sold for \$120,000 and the costs of the environmental surveys, title

report, and title insurance equaled \$5,000, then ISUF would pay the sum \$115,000 to Donor.

- b. If ISUF has not sold, or entered into an agreement to sell, the Property prior to notification of the State Board's decision, it shall, in its discretion, transfer the Property to Donor or pay \$125,000 to Donor.

10. The terms of this Agreement shall survive transfer of the Property to ISUF.

This Gift Agreement is effective on the date first written above. The signatories to this Gift Agreement, below, agree that this Gift Agreement may be executed in any number of counterparts with the same effect as if all the signatories has signed the same document, and all counterparts shall be construed together and shall constitute one written document

DONOR

BEVERLY BISTLINE

Dated:_____

IDAHO STATE UNIVERSITY FOUNDATION, INC.

By_____

Mike Byrne, as President

Dated:_____

IDAHO STATE UNIVERSITY

By_____

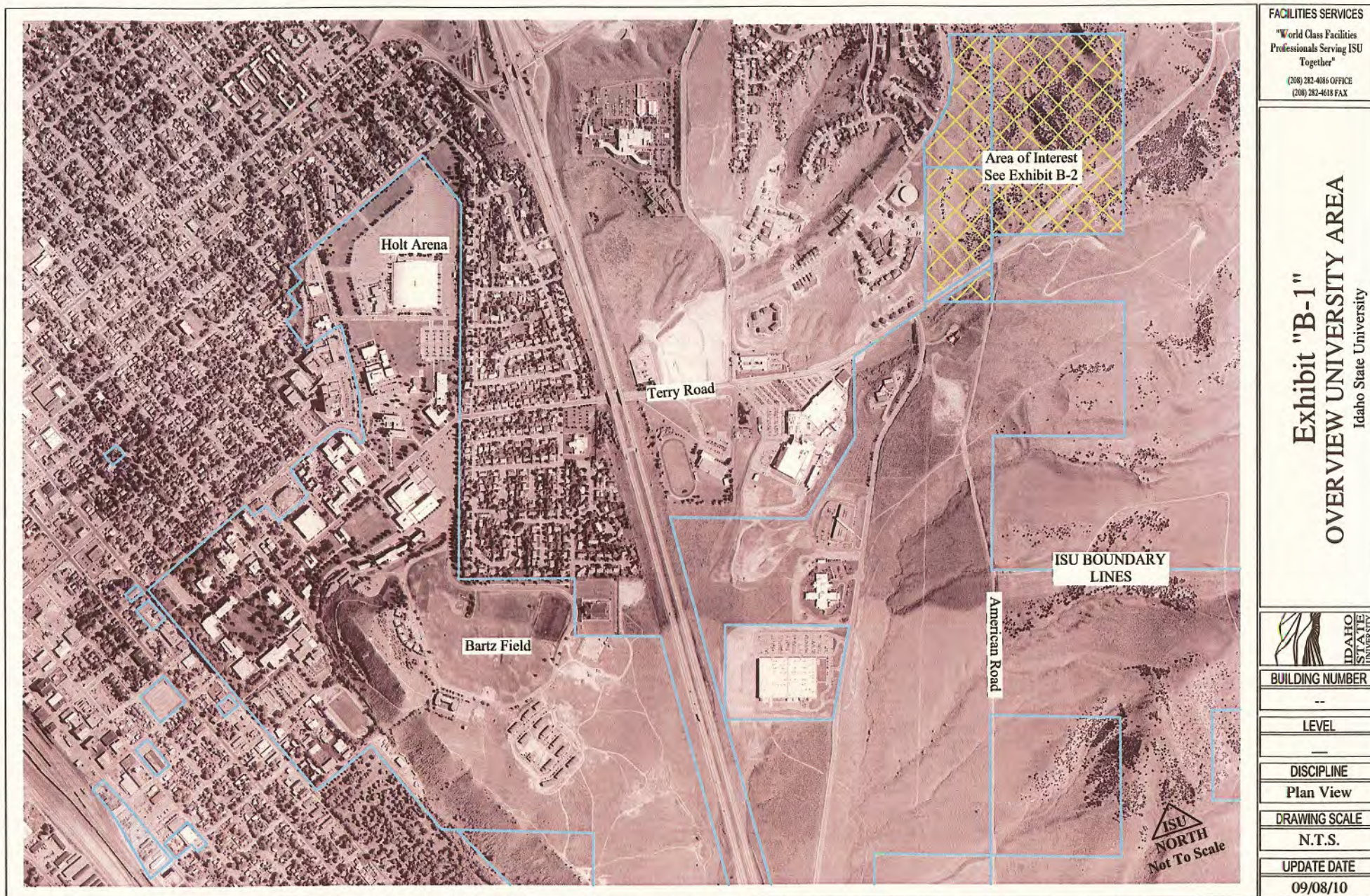
Arthur C. Vailas, as President

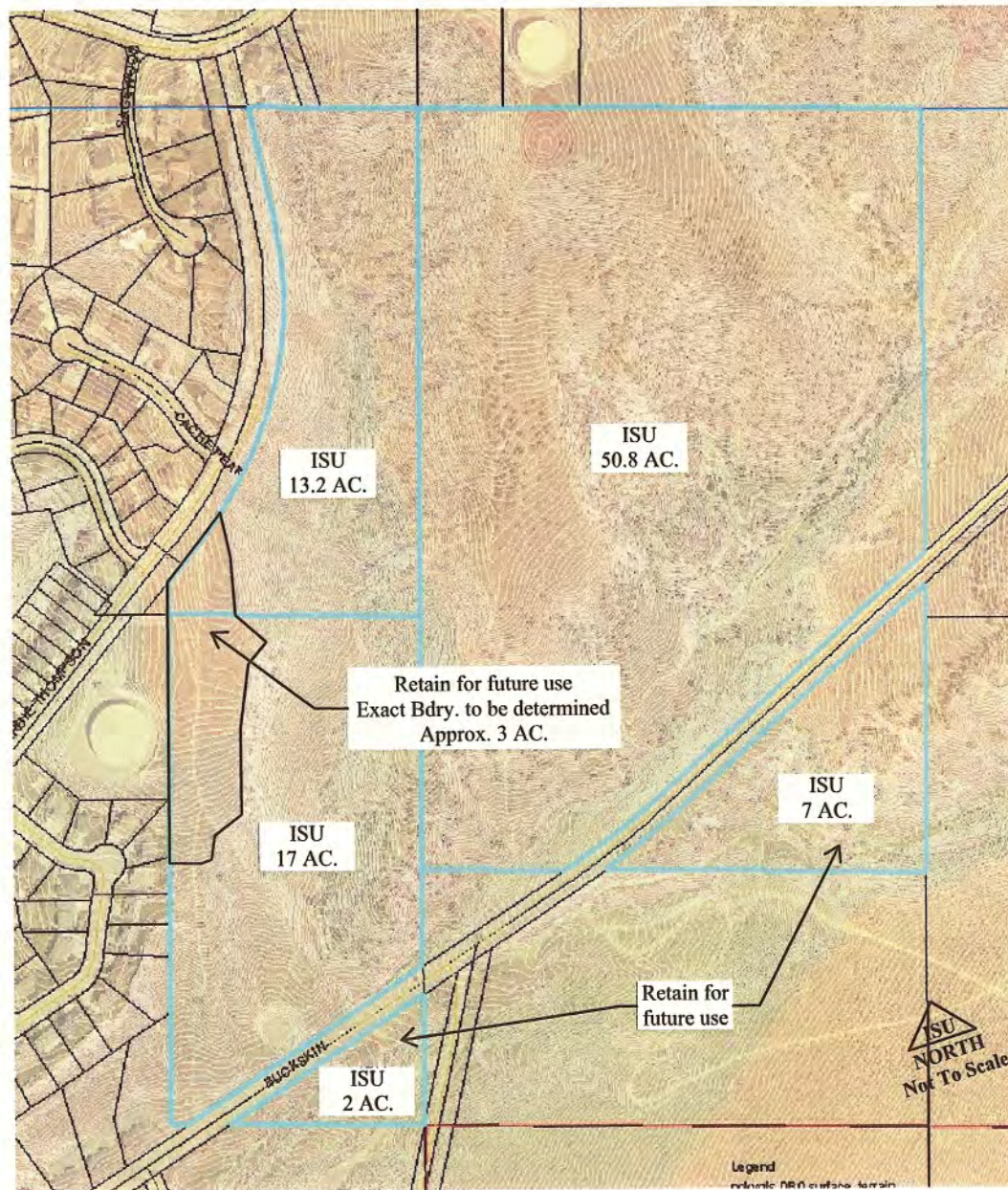
Dated:_____

Approved by the State Board of Education the
_____ day of _____, 201____.

EXHIBIT A

A tract in the Northeast $\frac{1}{4}$, Northeast $\frac{1}{4}$, S25-T6S-R34E, Tax 76, 13.91 AC Country property in Pocatello, Bannock County, Idaho.





(208) 282-4086 OFFICE
(208) 282-4618 FAX

Exhibit "B-2"
ISU AREA OF INTEREST
Idaho State University



1000

LEVEL

Plan View

N.T.S.

09/08/10

**BOWMAN APPRAISAL AND VALUATION
COMMERCIAL AND RESIDENTIAL APPRAISAL**

P.O. Box 2381
POCATELLO, IDAHO 83206

208 239-0763
208 241-8455
208 241-1713

January 15, 2010

Mr. Alan Van Orden
Jordan & Company
109 N. Arthur, Suite 400
Pocatello, ID 83204

Dear Mr. Van Orden,

In accordance with your request for an estimate of the fair market value of the commercial property located on Hospital Way, Pocatello, Idaho in Bannock County, the following appraisal report is enclosed. The appraisal was completed for Mr. Van Orden of Jordan & Company for the purpose of determining the current market value. The market approach to value was developed in this assignment.

I have personally inspected the property site and have made a careful and detailed analysis of all factors pertinent to the estimate of value.

The accompanying report of 92 pages, including this Letter of Transmittal, contains the results of my investigation and analysis. This appraisal report conforms to 12 CRF Part 34 (FIRREA) and adheres to the current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

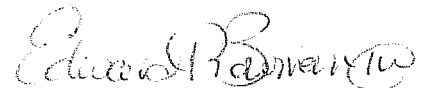
In my opinion, the fair Market Value of the above property as of date, was

Residential Commercial Professional	\$1,200,000.00
Residential Low Density Zoning	\$125,000.00

Respectfully Submitted,



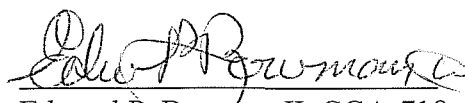
Edward P. Bowman II
Certified General Appraiser




Edward P. Bowman, III
Associate Appraiser

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PURPORTED OWNER:	Beverly Bistline PO Box 8 Pocatello, Idaho 83204
LOCATION OF PROPERTY:	Hospital Way Pocatello, Idaho 83201
PROPERTY RIGHTS APPRAISED:	Fee Simple Title, subject to all easements and restrictions of record
HIGHEST AND BEST USE:	Commercial Development (Medical Office Building)
HIGHEST AND BEST USE: ZONING	Residential Commercial Professional (Requires Zoning Change)
DATE OF VALUATION:	December 29, 2009
TOTAL LAND VALUE: Residential Commercial Professional Zoning	\$1,200,000.00
TOTAL LAND VALUE: Residential Low Density Zoning	\$125,000.00

APPRAISER 
Edward P. Bowman II, CGA-718
Certified General Appraiser


Edward P. Bowman III, RT-1085
Associate Appraiser

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

UNIVERSITY OF IDAHO

SUBJECT

Unified communications initiative – phased replacement of University of Idaho (UI) legacy telecommunication systems and platform for future communication solutions

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

This initiative is intended to replace aging and costly UI legacy voice communication systems with a unified communications system that will allow UI to centralize support and equipment costs for telecommunications -- eliminating duplicative systems and resources costs, consolidating network and voice costs, replacing failing services, and facilitating cost avoidance. This initiative will also provide a platform for future capabilities, such as emergency notification, audio/video conferencing, call centers, and other applications along with providing functionality for collaborative initiatives and the opportunity for increased operational efficiencies.

The telecommunications industry is rapidly moving to voice communications over the Internet. It consolidates multiple technologies over a common infrastructure framework that allows for operational efficiencies and cost savings. UI has gained great knowledge from collaborating with Boise State University in their rollout of this type of technology both on their campus and on the UI-Boise campus.

IMPACT

The project will be implemented in phases. The first phase, which is a pilot project, includes installations at UI-Coeur d'Alene and a small rollout on the UI-Moscow campus. The cost for the first phase is estimated at \$225,000 and will be covered by internal UI funding.

Once this portion of the project is successfully completed and UI has a good understanding of the risks and complexities of the solution, UI will come to the Board with a proposal for implementing this solution for the remainder of the UI-Moscow campus and the larger UI centers.

STAFF COMMENTS AND RECOMMENDATIONS

Staff has no comments or recommendations.

BOARD ACTION

This item is for informational purposes only. Any action will be at the Board's discretion.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

UNIVERSITY OF IDAHO

SUBJECT

Capital Project Authorization Request, Theophilus Tower Elevator Modernization and Life Safety Improvements

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedure, Section, V.K.1 & V.K.2

BACKGROUND/DISCUSSION

This is an initial request for Regent's Authorization to implement a Capital Project to improve and upgrade the existing elevators in Theophilus Tower, a residential facility located on the main campus of the University of Idaho, Moscow.

Theophilus Tower serves as one of the primary residential facilities for undergraduate students who elect to reside within the University Housing and Residential Life System. The facility dates back to 1968 and is a medium rise structure of 12 stories, including the basement. The facility is noted in the University's Long Range development Plan as being a facility the University should continue to utilize into the known future.

Recently, the University has invested in, and completed, significant project efforts aimed at ensuring that the structure is in good condition and well placed to house students well into the foreseeable future. These include a replacement of the roofing system, a comprehensive repair of the exterior masonry systems and major improvements to the fire alarm systems all in the last five years.

Inspections of the elevators in Theophilus Tower reveal a need to address items such as the replacement and upgrade of outdated machine room equipment, new elevator systems equipment, upgrades and improvements to the elevator car finishes, providing machine room cooling, upgrades in universal accessibility requirements, and code required improvements to electrical and fire alarm systems.

The University estimates that the total project cost for these necessary improvements is \$941,000. The University has allocated sufficient funds towards this effort based on this estimate of cost.

At this time, the University is requesting authorization to proceed with the effort to modernize and provide for the life safety system improvements at this critical University facility.

This project is fully consistent with the University's strategic plan, residential life goals, and the University's Long Range Capital Development Plan (LRCDP).

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

IMPACT

Immediate fiscal impact of this effort is \$941,000. The project fund source is Auxiliary Services and University Housing facility reserves, allocated for this specific and intended purpose.

<u>Funding</u>		<u>Estimate Budget</u>	
State	\$ 0	Construction	\$ 731,500
Federal (Grant):	0	A/E & Consultant Fees	41,250
Other (State & UI)	<u>941,000</u>	Contingency	<u>168,250</u>
Total	\$ 941,000	Total	\$ 941,000

ATTACHMENTS

Attachment 1 – Capital Project Tracking Sheet

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

The UI seeks approval for a capital project involving elevator modernization and life safety improvements in a student residential facility. The fund source for the project is housing reserve and maintenance funds.

Staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho to implement a capital project to improve and upgrade the existing elevators in Theophilus Tower, a residential facility located on the Moscow campus of the University of Idaho, in the amount of \$941,000. Approval includes the authority to execute all necessary consulting, construction and vendor contracts to implement the design and construction phases of the project.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Office of the Idaho State Board of Education
Capital Project Tracking Sheet
As of October, 2010

History Narrative

- 1 Institution/Agency:** University of Idaho **Project:** Theophilus Tower Elevator Modernization and Life Safety Improvements, University of Idaho, Moscow, Idaho
- 2 Project Description:** Capital Project to improve and upgrade the existing elevators in Theophilus Tower, a residential facility located on the main campus of the University of Idaho, Moscow, Idaho
- 3 Project Use:** Project will address items such as the replacement and upgrade of outdated machine room equipment, new elevator systems equipment, upgrades and improvements to the elevator car finishes, providing machine room cooling, upgrades in universal accessibility requirements, and code required improvements to electrical and fire alarm systems.
- 4 Project Size:** N/A

	Sources of Funds				Use of Funds			
	PBF	ISBA	Other	Total Sources	Planning	Use of Funds Const	Other**	Total Uses
Initial Cost of Project	\$ -	\$ -	\$ 941,000	\$ 941,000	\$ 41,250	\$ 731,500	\$ 168,250	\$ 941,000
History of Revisions:								
Total Project Costs	\$ -	\$ -	\$ 941,000	\$ 941,000	\$ 41,250	\$ 731,500	\$ 168,250	\$ 941,000

History of Funding:	* Other Sources of Funds						
	PBF	ISBA	Institutional Funds (Gifts/Grants)	Student Revenue	Other	Total Other	Total Funding
Initial Authorization Request, Oct 10					\$ 941,000	\$ 941,000	\$ 941,000
Total	\$ -	\$ -	\$ -	\$ -	\$ 941,000	\$ 941,000	\$ 941,000

* University of Idaho Housing reserve and maintenance funds set aside for this purpose . UI will report back to the Board of Regents any resulting revisions to the project estimate resulting from the bid process and seek additional project authorization as may be required.

** Project Contingency

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

UNIVERSITY OF IDAHO

SUBJECT

Formation of an Applied Research Entity

REFERENCE

February, 2010
June 2010

Executive Session item.
Agenda Item – Matter postponed and referred back to
BAHR Committee.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.E.2.

BACKGROUND/DISCUSSION

The University of Idaho is requesting authority to participate in establishing an Applied Research Entity to be known as the University of Idaho Laboratory of Applied Science and Research, Inc. (LASR), to expand on the University's fiscal impact within the state. The University was instructed by the Regents to re-examine the proposed documentation for LASR and apply the Board's policy V.E. Gifts and Affiliated Foundations.

LASR Operating Agreement. The University has restructured the LASR documents to correspond to a foundation agreement similar to that used for the University's fund raising foundation. Under this operating agreement the University's relationship with LASR is more specifically defined, in conformance with Board policy V.E., including the following:

- Use and Availability of University Resources – Article III
 - University liaison to LASR
 - Terms for loaning University employees to LASR
 - Terms for University support staff services
 - Terms for University facilities and equipment
- Terms for Management and Operation of LASR – Article IV
 - Applications for grants and sponsored programs
 - Acceptance of grants and sponsored program agreements
 - Fund transfers between LASR and the University
 - LASR expenditures and financial transactions
 - Transfer of University assets to LASR
 - Separation of funds between LASR and the University
- Terms Specific to LASR's Relationship with the University – Article V,
 - Representation of the University on the LASR board of directors
 - University access to LASR records
 - Prohibition against supplemental compensation by LASR to any University employees
- Audits and Reporting Requirements of LASR – Article VI

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

- Terms Addressing Conflict of Interest and a LASR Code of Ethics and Conduct – Article VII
- General Terms – Article VIII
 - Right of the parties to terminate and the effect of termination without a subsequent operating agreement becoming effective
 - Dispute resolution procedure
 - Terms for transfer of property and assets of LASR in the event of dissolution of LASR
 - Terms clarifying that LASR shall at all times act as an independent entity
 - Terms clarifying that neither party is liable for the other's contracts, torts or other acts or omissions

While the above list is not exhaustive of the full agreement, it highlights the sections important to the concerns expressed by Board members at the June 2010 Board meeting.

LASR Transition Business Plan: The University has also re-examined the transition business plan for LASR. In that regard, it is first important to note that the model for ongoing operations of a fully functioning LASR is essentially identical to the operating model for the University's research engine, including the collaborative operations of the three Idaho institutions involved in CAES. In this model, research funds are sought through competitive grants, research contracts and other sources. When the funds are located, the specific assets and personnel necessary to accomplish the research grant or contract are mustered and paid for with the funds from that specific grant or contract. In addition, an overhead rate is applied to each grant or contract to sustain the administrative operations and overarching operating costs of the LASR.

The transition business plan for LASR envisions a period in which LASR operations start only after the time necessary for LASR to negotiate a federal overhead rate and to then bring on-line specific projects. The federal overhead rate will establish the charge applied to each government grant or contract to fund LASR overhead in addition to the direct costs of the project. The federal overhead rate will also form the basis for a similar charge to the private sector for privately funded grants or contracts. During the initial overhead negotiation period, LASR's operational needs will be minimal, since no government projects can be taken on until establishment of the overhead rate.

The start up of LASR operations and projects will depend on the nature and extent of projects that can be found from current University projects, to the extent they fit within the LASR operating model. The University envisions that current or future projects in the University's Center for Advanced Microelectronics and Biomolecular Research (CAMBR) may be a likely source for LASR start up and that University employees at CAMBR may be the initial employees for LASR. Additionally, the University believes that the LASR applied research entity is the

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

best means for continuing and expanding on the successful research of the CAMBR staff.

This start up mechanism is more specifically set out in the attached business plan for the LASR transition.

IMPACT

Creation and operation of LASR is intended to be financially neutral to the University. LASR will fund its own operations from revenues from research grants and contracts.

ATTACHMENTS

Attachment 1 – University/LASR Operating Agreement

Page 5

Attachment 2 – LASR Transition Business Plan

Page 59

STAFF COMMENTS AND RECOMMENDATIONS

The University of Idaho has robust research activity, bringing in tens of millions of dollars a year in grants and contracts. Nevertheless, a research enterprise in an academic setting sometimes limits its flexibility in working with the private sector. For example, private industry may be reluctant to engage in applied research work with public institutions due to heightened sensitivities surrounding confidentiality and intellectual property. In addition, university research generally has a more long-term, academic focus. LASR's independent, non-profit status would provide it with the flexibility to take on short-term applied research projects, which would be more closely aligned to the needs of the private sector. At the same time, the University would still be available as backup for longer-term questions or problems. In addition, LASR would provide an independent venue for faculty and student to engage in applied research work with opportunities for technology transfer.

In the Background/Discussion above, the institution highlighted provisions in the operating agreement which address concerns raised by the Board at the June 2010 meeting. Specifically, the LASR operating agreement incorporates the salient provisions of the Board's policy for affiliated foundations. Staff makes the following observations with respect to the operating agreement:

1. Article IV.F. (Tab 11, page 9): Consistent with the foundation policy, the agreement provides for separation of funds. In addition, the last two sentences provide that some LASR expenses can be paid through the university and reimbursed by LASR on a regular basis. This provision would accommodate, for example, payroll for a university employee on loan to LASR. (Section 3.c. of the Loaned Employee Agreement (Tab 11, page 32) provides that LASR will reimburse the university for 100% of the university's total cost of the loaned employee's salary and benefits and any reimbursement costs (e.g. travel).)

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010**

2. Article VIII.C. (Tab 11, page 14): This section establishes the dispute resolution process. The final step after exhausting all other remedies is litigation. Staff discussed with the institution the possibility of substituting binding arbitration in lieu of litigation. The institution took the position that the two forms of dispute resolution do not typically differ significantly in terms of time or cost.
3. Article VIII.E. (Tab 11, page 14): The operating agreement shall be submitted for review and approval by the Board not less than every two years. This provision provides the Board with regular oversight of the proposed entity's operations.
4. Services Agreement (Tab 11, page 38): The University would provide a number of identified administrative services to LASR including "support for LASR Audit Committee." An audit committee is not referenced in the Articles or Bylaws, but clearly the Services Agreement contemplates the formation of such a committee.

Attachment 2 (Tab 11, page 59) provides a good summary of the transition business plan for LASR. The financial assumptions are built on pending awards which would fund salaries for two researchers. In addition, an overhead rate of approximately 12% on the pending awards would fund university-provided administrative support including human resources, accounting/billing and grant management. Thus, the transition would be cost-neutral to the university and provide LASR minimal workforce and services until it becomes financially self-sufficient.

Overall, the university's proposal is sound and staff recommends approval.

BOARD ACTION

I move to approve the request by the University of Idaho to participate in the formation of the applied research entity to be known as LASR and to enter into the proposed Operating Agreement, Loaned Employee Agreement and Services Agreement in substantial conformance with the documents attached to the Board materials.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**OPERATING AGREEMENT
BETWEEN
THE UNIVERSITY OF IDAHO
AND
THE UNIVERSITY OF IDAHO LABORATORY OF APPLIED SCIENCE &
RESEARCH, INC.**

This agreement ("Operating Agreement") is entered into effective the ____ day of _____ 2010 by and between the University of Idaho ("University") and the University of Idaho Laboratory of Applied Science & Research, Inc. ("LASR"). The University and the LASR are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

WHEREAS, LASR is a nonprofit corporation incorporated on _____, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, LASR will become a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, LASR's mission includes a.) conducting research in areas deemed appropriate by the governing Board of Directors and consistent with the charitable, scientific, literary, research, educational, and service goals of the University and b.) acquiring and disseminating knowledge, supporting the education, research, and public service functions of the University;

WHEREAS, LASR and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

WHEREAS, the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively the "State Board") have promulgated Policies and Procedures to be effective as of July of 2008 ("State Board's Policies and Procedures") which are attached hereto as Exhibit "A";

WHEREAS, Section V.E.2.c. of the State Board's Policies and Procedures requires the University to enter into a written operating agreement with LASR that sets forth their operating relationship; and

WHEREAS, LASR and the University intend for this agreement to be the written operating agreement required by Section V.E.2.c. of the State Board's Policies and Procedures.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, the University and LASR hereby agree as follows:

ARTICLE I

LASR 'S PURPOSES

LASR's purpose is conducting research in areas deemed appropriate by the governing Board of Directors and consistent with the charitable, scientific, literary, research, educational, and service goals of the University and acquiring and disseminating knowledge, supporting the education, research, and public service functions of the University.

In carrying out its purposes LASR 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 University.

ARTICLE II

LASR'S ORGANIZATIONAL DOCUMENTS

LASR shall provide copies of its Articles of Incorporation and Bylaws to the University. All amendments of such documents shall also be provided to the University. Furthermore, LASR shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to LASR's Articles of Incorporation and Bylaws.

ARTICLE III

UNIVERSITY RESOURCES AND SERVICES

A. *University Employees.*

1. *Liaison:* The University's Vice President for Research and Economic Development shall serve as the University's liaison to LASR (the "Liaison"). The duties and responsibilities of the Liaison are as follows:

a. The Liaison shall be responsible for communicating with LASR regarding the University's activities and programs relevant to LASR's mission and for coordinating any administrative support provided by the University to LASR.

b. The Liaison shall report on behalf of the University to LASR's Board of Directors regarding the University's research efforts with regard to LASR. The Liaison may also report other information to LASR's Board of Directors that is pertinent to the common goals of the University and LASR.

2. The University and LASR may elect to enter into agreements for the loaning of employees to LASR by the University pursuant to terms substantially similar to the Loaned Employee Agreement attached as Exhibit "B." The loaned employees shall report to either LASR Board or the Executive Director of LASR, in either case as determined by LASR Board and as specified in the loaned employee agreements.

3. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee other than an employee loaned to LASR shall be permitted to have responsibility or authority for LASR policy making, financial oversight, spending authority, investment decisions, or the supervision of LASR employees, provided however University employees appointed to the LASR Board of Directors shall have authority to act as such within the laws of the state of Idaho governing conflicts of state officials as well as the policies of the LASR Board of Directors regarding conflicts.

B. *Support Staff Services.* The University may provide administrative support in financial, accounting, and research compliance services to LASR, as set forth in the Service Agreement attached hereto as Exhibit "C" ("Service Agreement"). Except as specifically provided otherwise herein, all University employees who provide support services to LASR shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with LASR in a Loaned Employee Agreement. LASR will pay directly to the University the portion of the overhead costs associated with the services provided to LASR pursuant to the Service Agreement or as otherwise determined by the agreement of the Parties.

C. *University Facilities and Equipment.* The University may provide the use of the University's office space, laboratory space and equipment and associated services to LASR's employees upon the terms agreed to by the University and LASR. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Service Agreement.

D. *No LASR Payments to University Employees.* Notwithstanding any provision of this Agreement to the contrary, LASR shall not make any payments directly to a University employee in connection with any resources or services provided to LASR pursuant to this Article, provided however, nothing in this sub-section D shall limit or prohibit formal joint appointments of employees between the University and LASR under which LASR pays the percentage of salary and employee benefits allocated to LASR under the joint appointment agreement.

ARTICLE IV

MANAGEMENT AND OPERATION OF LASR

A. *Research Grant and Sponsored Programs.*

1. *Applications for Grants and Sponsored Programs.* Any and all LASR applications for Grants or Sponsored Programs shall make clear to prospective grantors that (1) LASR is a separate legal and tax entity organized for the purpose of conducting research in consistent with the charitable, scientific, literary, research, educational, and service goals of the University of Idaho and acquiring and disseminating knowledge, supporting the education, research, and public service functions of the University of Idaho; and (2) responsibility for the governance of LASR, including performance of the terms of any grants or sponsored program resides in LASR's Board of Directors.

B. *Acceptance of Grants and Sponsored Program Agreements.*

1. *Approval Required Before Acceptance of Certain Grants and Sponsored Program Agreements.* Before accepting grants or sponsored program agreements that may require administration or direct expenditure by the University, LASR shall obtain the prior written approval of the University. Similarly, LASR shall also obtain the University's prior written approval of the acceptance of any grant or sponsored program agreement that would impose a binding financial or contractual obligation on the University. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

2. *Acquisition of Real Property.* LASR shall conduct due diligence on all real property that it acquires. At a minimum, acquisition shall be consistent with the terms of Article VII, D, below.

3. *Performance/Administration of Accepted Grants and Sponsored Program Agreements.* All grants and sponsored program agreements received by LASR shall be performed and administered by LASR in accordance with the terms of such grant or agreement and in accordance with applicable state and federal laws, rules and regulations. To the extent the University furnishes support services to assist LASR in performing and administering any grant or agreement, such services shall be furnished in accordance with the Service Agreement between the Parties.

C. *Fund Transfers.* LASR may, from time to time, transfer funds to the University as part of LASR's educational and research mission in support of the University. LASR's Treasurer or other individual to whom such authority has been delegated by LASR's Board of Directors shall be responsible for transferring funds as authorized by LASR's Board of Directors. All transfers and expenditures noted in this Section must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with LASR's mission in support of the University.

1. *Competitive Grant Transfers.* LASR may transfer funds to the University by way of competitive grants or sponsored research agreements that are consistent with the role and mission of the University. Any such grant or agreement will only be expended by the University pursuant to the terms of the grant or agreement. The University shall account for such grant or agreement in the same fashion as other grants and sponsored program agreements and shall notify LASR on a timely basis regarding the uses of such grant or agreement funds.

2. *Unrestricted Gift Transfers.* LASR may make unrestricted donations to the University, consistent with LASR's mission. Such donated funds will be expended under the oversight of the University President in compliance with state law, State Board and University policies. If LASR elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as LASR's Board of Directors may determine in such Board's sole discretion.

D. *LASR Expenditures and Financial Transactions.*

1. *Signature Authority.* LASR designates LASR Chairman and Treasurer as the individuals with signature authority for LASR in all financial transactions. LASR's Treasurer may also delegate signature authority on a temporary basis consistent with LASR's Bylaws to another LASR employee, an employee loaned to LASR, or a LASR Board member who is not a University employee. In no event may the person with LASR signature authority for financial transactions be a University employee, unless such individual is an employee who is loaned to LASR.

2. *Expenditures.* All expenditures of LASR shall be (1) consistent with the purposes of LASR, and (2) not violate restrictions imposed by any applicable grant or sponsored program agreement as to the use or purpose of the specific funds.

E. *Transfer of University Assets to LASR.* No University funds, assets, or liabilities may be transferred directly or indirectly to LASR without the prior approval of the State Board except when:

1. Such transfer is part of and in compliance with a research grant or sponsored program agreement in which the University is engaged with LASR, and such transfer is in compliance with all policies of the State Board of Education and Regents of the University of Idaho.

F. *Separation of Funds.* All LASR assets (including bank and investment accounts) shall be held in separate accounts in the name of LASR using LASR's Federal Employer Identification Number. The financial records of LASR shall be kept using a separate chart of accounts and shall be kept in a secured database that is protected by separate password-only access. For convenience, however, some LASR expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to LASR and shall be reimbursed by LASR on a regular basis.

G. *Insurance.* LASR shall maintain insurance to cover the operations and activities of its directors, officers and employees. LASR shall also maintain general liability coverage.

H. *Organization Structure of LASR.* The organizational structure of LASR is set forth in LASR's Articles of Incorporation which are attached hereto as Exhibit "D" and LASR's By-Laws, which are attached at Exhibit "E." LASR agrees to provide copies of such Articles and By-Laws as well as any subsequent amendments to such documents to the University. Any such amendments to the Articles and By-Laws shall be attached hereto as additions to Exhibit "D" and Exhibit "E", respectively.

I. *Conflicts of Interest.* LASR, in its by-laws has adopted a written policy addressing the manner LASR will address conflict of interest situations.

ARTICLE V

LASR RELATIONSHIPS WITH THE UNIVERSITY

A. *Joint Participation.* The parties hereto recognize that joint participation and regular interaction among employees of both LASR and University is beneficial and encouraged. This may include service on committees, councils, review boards and/or other activities identified by either party for the mutual benefit and interest of both parties.

B. *University's Representation on LASR's Board.* The President of the University shall appoint the members of LASR's Board of Directors and the University will be allowed representation on LASR's Board of Directors as set forth in the Bylaws as attached hereto, the terms of which, with respect to appointment of the Board members and University representation on the Board shall not be changed without the prior written agreement of the University. Provided, however, the University's representation on the Board shall not constitute a majority of the Board.

C. *Cost Recovery.* The parties shall allocate costs associated with reciprocal operations in a fair and equitable manner so that the full and independent costs of such operations can be recovered by the respective parties.

D. *Classified Activities.* LASR shall be responsible for site security and providing all applicable registrations, approvals and reviews.

E. *Export Activities.* LASR shall be responsible for all matters pertaining to export control and providing all applicable registrations, approvals and reviews.

F. *Research Compliance and Export Control.* LASR shall be responsible for all matters pertaining to research compliance and export controls.

G. *Subsequent Agreements.* The parties hereto anticipate that they may enter into subsequent written agreements on a project by project basis setting forth the parties' respective duties and obligations in regard to such projects. As such, the parties hereto acknowledge and agree that any such agreement shall govern for the purpose of any such specified project. Provided, however, that if there is a conflict between the terms of the Operating Agreement and the terms of a subsequent agreement, the terms of the Operating Agreement will be controlling and supersede any inconsistent terms in the subsequent agreement.

H. *Access to Records.* The University shall have reasonable access to the financial records of LASR upon permission granted by LASR from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws, LASR policies, and guidelines. In addition, upon request of LASR, the University shall execute a proprietary and confidentiality agreement and instruct its agents and employees that all confidential information of LASR shall be protected from disclosure. Except as specifically authorized under this agreement or any applicable proprietary and confidentiality agreement between the University and LASR, the University's access shall not include proprietary information of LASR or of entities contracting with LASR for research services, such as information protected by trade secret or by specific confidentiality agreements.

I. *Records Management.*

1. LASR shall be responsible for maintaining all permanent records of LASR including but not limited to LASR's Articles, By-Laws and other governing documents, all necessary documents for compliance with IRS regulations, research grants, and all other LASR records as required by applicable laws.

2. LASR's Board of Directors shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties understand that LASR is not a public agency or a governing body as defined in the Idaho Code and the Idaho Open Meeting Law and Access to Public Records statutes. Nothing in this Operating Agreement shall be construed as a waiver of LASR's right to assert exemption from these statutes.

J. *Identification of Source.* LASR shall be clearly identified as the source of any correspondence, activities and advertisements emanating from LASR.

K. *Establishing LASR's Annual Budget.* LASR shall provide the University with LASR's proposed annual operating budget and capital expenditure plan (if any) prior to the date of LASR's Board of Directors meeting at which LASR's Board of Directors will vote to accept such operating budget.

L. *Attendance of the University's President at LASR's Board of Director Meetings.* LASR may invite the University's President to attend meetings of LASR's Board of Directors and may act in an advisory capacity in such meetings.

M. *Supplemental Compensation of University Employees.* No University employee shall receive direct payments, compensation, or other benefits from LASR, provided that LASR may pay for those benefits which are necessary for its normal course of operation, including, but not limited to, travel and continuing professional education. Any such payment must be paid by LASR to the University and the University shall then pay or reimburse the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from LASR. Provided however, nothing in this sub-section N shall limit or prohibit formal joint appointments of employees between the University and LASR under which LASR pays the percentage of salary and employee benefits allocated to LASR under the joint appointment agreement.

ARTICLE VI

AUDITS AND REPORTING REQUIREMENTS

A. *Fiscal Year.* LASR and the University shall have the same fiscal year.

B. *Annual Audit.* LASR shall have an annual financial audit conducted in accordance with Government Accounting Standards Board or Financial Accounting Standards Board principles as appropriate. The audit shall be conducted by an independent certified public accountant who is not a director or officer of LASR. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to LASR's Board of Directors. Such

audit reports shall contain LASR's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

C. *Separate Audit Rights.* The University agrees that LASR, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of granted funds from LASR. LASR agrees that the University, at its own expense, may, at reasonable times, inspect and audit LASR's financial books and accounting records in accordance with Article V, H, above.

D. *Annual Reports to University President.* Upon request, LASR shall provide a written report to the University President setting forth the following items:

1. the annual financial audit report;
2. an annual report of LASR transfers made to the University, summarized by University department;
3. an annual report of grants and sponsored program awards received by LASR;
4. a list of all of LASR's officers, directors, and employees;
5. a list of University employees for whom LASR made payments to the University for approved purpose during the fiscal year, and the amount and nature of each payment;
6. a list of all state and federal contracts and grants managed by LASR;
7. an annual report of LASR's major activities; and
8. an annual report of any actual litigation involving LASR during its fiscal year, identification of legal counsel used by LASR for any purpose during such year, and identification of any potential or threatened litigation involving LASR limited to the extent necessary to protect attorney-client privilege and litigation strategy.

ARTICLE VII

CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

A. *Conflicts of Interest Policy Statement.* LASR, in its by-laws has adopted a written policy addressing the manner LASR will address conflict of interest situations.

B. *Dual Representation.* Under no circumstances may a University employee represent both the University and LASR in any negotiation, sign for both Parties in transactions, or direct any other University employee under their immediate supervision to sign for the related Party in a transaction between the University and LASR. This shall not, however, prohibit

University employees from drafting transactional documents that are subsequently provided to LASR for LASR's independent review, approval and use.

C. *Contractual Obligation of University.* LASR shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University. University approval of any such contract shall comply with policies of the State Board with respect to the State Board's approval of University contracts.

D. *Acquisition or Development of Real Estate.* LASR shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by LASR, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and LASR. Any notification by the University to the State Board required pursuant to this Section may be made through the State Board's chief executive officer in executive session as permitted pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII

GENERAL TERMS

A. *Effective Date.* This Agreement shall be effective on the date set forth above.

B. *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 University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by LASR that is not cured within the time frame set forth above, LASR may require the University to pay, within 180 days of written notice, all debt incurred by LASR on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should LASR choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require LASR to pay any debt it holds on behalf of LASR 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 negotiations fail, the Parties will initiate the Dispute Resolution mechanism described below (through reference to LASR's Chairman and the State Board) to further attempt to negotiate a new agreement. Termination of this Operating Agreement shall not constitute or cause dissolution of LASR, provided however, in the event a new operating agreement is not achieved upon completion of the dispute resolution process, the association between LASR and the University will be ended, and LASR will cease all references

to the University of Idaho in its name and with respect to its operations other than as is necessary to complete projects or contracts pending as of the final date of the dispute resolution process.

C. *Dispute Resolution.* The Parties agree that in the event of any dispute arising from this Operating Agreement, 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, then the dispute will be referred to LASR's Chairman and the University's President. If LASR's Chairman and University's President cannot resolve the dispute, then the dispute will be referred to LASR's Chairman and the State Board for resolution. If the dispute is not resolved by the aforementioned Parties, the University and LASR 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 unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. 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.

D. *Dissolution of LASR.* Upon dissolution of LASR, it shall transfer the balance of all property and assets of LASR in a manner consistent with its Articles of Incorporation, which state that "upon dissolution or final liquidation, the assets of the Corporation remaining after discharge of the debts and obligations of the Corporation shall be distributed exclusively to the University of Idaho, or to such other charitable, scientific, literary, research or educational organizations designated by the University of Idaho which would then qualify under the provisions of the Internal Revenue Code §501(c)(3)."

E. *Board Approval of Operating Agreement.* Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by 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.

F. *Modification.* Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.

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

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

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

To the University:

President of the University of Idaho
University of Idaho
P.O. Box 443151
Administration Building Room 105
Moscow, Idaho 83844-3151

To LASR:

President of LASR
LASR, Inc.

J. *No Joint Venture.* At all times and for all purposes of this Operating Agreement, the University and LASR shall act in an independent capacity and not as an agent or representative of the other Party.

K. *Liability.* The University and LASR 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.

L. *Indemnification.* The University and LASR 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 University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code Sections 6-901 et seq.

M. *Assignment.* This Agreement is not assignable by either Party, in whole or in part.

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

O. *Articles, Sections, Subsections and Subparagraphs.* This Agreement consists of text divided into Articles that are identified by roman numeral (for example Article I), Sections that are identified by an uppercase letter followed by a period (for example A.), subsections that are identified by a number followed by a period (for example 1.) and subparagraphs that are identified by a lower case letter followed by a period (for example a.). The organization is hierarchical meaning that a reference to a division of the document includes all of its subsections

(for example a reference to a Section includes the Section and all of its subsections and subparagraphs).

P. *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.

Q. *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.

R. *Cooperation of the Parties.* The parties hereto agree to do all acts and things necessary to make, execute and deliver any and all written instruments as shall from time to time be reasonably required to carry out the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the University and LASR have executed this agreement on the above specified date.

University of Idaho

University of Idaho Laboratory of Applied
Science & Research, Inc.

By: _____
Its: President

By: _____
Its: Chairman

Exhibit A to Operating Agreement
Policies of the State Board

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

E. Gifts and Affiliated Foundations

1. Purpose of the Policy

a. The Board recognizes the importance of voluntary private support and encourages grants and contributions for the benefit of the institutions, school, and agencies under its governance. Private support for public education is an accepted and firmly established practice throughout the United States. Tax-exempt foundations are one means of providing this valuable support to help the institutions, school, and agencies under the Board's governance raise money through private contributions. Foundations are separate, legal entities, tax-exempt under Section 501(c) of the United States Internal Revenue Code of 1986, as amended, associated with the institutions, school, and agencies under the Board's governance. Foundations are established for the purpose of raising, receiving, holding, and/or using funds from the private sector for charitable, scientific, cultural, educational, athletic, or related endeavors that support, enrich, and improve the institutions, school, or agencies. The Board wishes to encourage a broad base of support from many sources, particularly increased levels of voluntary support. To achieve this goal, the Board will cooperate in every way possible with the work and mission of recognized affiliated foundations.

b. The Board recognizes that foundations:

- (1) Provide an opportunity for private individuals and organizations to contribute to the institutions, school, and agencies under the Board's governance with the assurance that the benefits of their gifts supplement, not supplant, state appropriations to the institutions, school, and agencies;
- (2) Provide assurance to donors that their contributions will be received, distributed, and utilized as requested for specified purposes, to the extent legally permissible, and that donor records will be kept confidential to the extent requested by the donor and as allowed by law;
- (3) Provide an instrument through which alumni and community leaders can help strengthen the institutions, school, and agencies through participation in the solicitation, management, and distribution of private gifts; and
- (4) Aid and assist the Board in attaining its approved educational, research, public service, student loan and financial assistance, alumni relations, and financial development program objectives.

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

- c. The Board, aware of the value of tax-exempt foundations to the well being of the institutions, school, and agencies under the Board's governance, adopts this policy with the following objectives:

- (1) To preserve and encourage the operation of recognized foundations associated with the institutions, school, and agencies under the Board's governance; and
- (2) To ensure that the institutions, school, and agencies under the Board's governance work with their respective affiliated foundations to make certain that business is conducted responsibly and according to applicable laws, rules, regulations, and policies, and that such foundations fulfill their obligations to contributors, to those who benefit from their programs, and to the general public.

2. Institutional Foundations

The foregoing provisions are designed to promote and strengthen the operations of foundations that have been, and may be, established for the benefit of the public colleges and universities in Idaho. The intent of this policy is to describe general principles that will govern institutional relationships with their affiliated foundations. It is intended that a more detailed and specific description of the particular relationship between an institution and its affiliated foundation will be developed and committed to a written operating agreement, which must be approved by the Board. Technology transfer organizations, including the Idaho Research Foundation, are not subject to this policy.

a. Board Recognition of Affiliated Foundations

- (1) The Board may recognize an entity as an affiliated foundation if it meets and maintains the requirements of this policy. The chief executive officer of each institution must ensure that any affiliated foundation recognized by the Board ascribes to these policies. The Board acknowledges that it cannot and should not have direct control over affiliated foundations. These foundations must be governed separately to protect their private, independent status. However, because the Board is responsible for ensuring the integrity and reputation of the institutions and their campuses and programs, the Board must be assured that any affiliated foundation adheres to sound business practices and ethical standards appropriate to such organizations in order to assure the public that the foundation is conducting its mission with honesty and integrity.
- (2) Upon the effective date of this policy, the institution chief executive officer shall provide a list of current affiliated foundations and an implementation plan to bring each foundation before the Board to be formally recognized as a nonprofit corporation or affiliated foundation to benefit a public college or university in

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

Idaho, for one or more of the purposes previously described in this policy. Each 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.

b. General Provisions Applicable to all Affiliated Foundations recognized by the Board

- (1) All private support of an institution not provided directly to such institution shall be through a recognized affiliated foundation. While an institution may accept gifts made directly to the institution or directly to the Board, absent unique circumstances making a direct gift to the institution more appropriate, donors shall be requested to make gifts to affiliated foundations.
- (2) Each affiliated foundation shall operate as an Idaho nonprofit corporation that is legally separate from the institution and is recognized as a 501(c)(3) public charity by the Internal Revenue Service. The management and control of a foundation shall rest with its governing board. All correspondence, solicitations, activities, and advertisements concerning a particular foundation shall be clearly discernible as from that foundation, and not the institution.
- (3) The institutions and foundations are independent entities and neither will 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 staff.
- (4) It is the responsibility of the foundation to support the institution at all times in a cooperative, ethical, and collaborative manner; to engage in activities in support of the institution; and, where appropriate, to assist in securing resources, to administer assets and property in accordance with donor intent, and to manage its assets and resources.
- (5) Foundation funds shall be kept separate from institution funds. No institutional funds, assets, or liabilities may be transferred directly or indirectly to a foundation without the prior approval of the Board except as provided herein. Funds may be transferred from an institution to a foundation without prior Board approval when:

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated FoundationsAugust 2009

- (a) A donor inadvertently directs a contribution to an institution that is intended for the foundation. If an affiliated foundation is the intended recipient of funds made payable to the Board or to an institution, then such funds may be deposited with or transferred to the affiliated foundation, provided that accompanying documents demonstrate that the foundation is the intended recipient. Otherwise, the funds shall be deposited in an institutional account, and Board approval will be required prior to transfer to an affiliated foundation; or
 - (b) The institution has gift funds that were transferred from and originated in an affiliated foundation, and the institution wishes to return a portion of funds to the foundation for reinvestment consistent with the original intent of the gift.
- (6) Transactions between an institution and an affiliated foundation shall meet the normal tests for ordinary business transactions, including proper documentation and approvals. Special attention shall be given to avoiding direct or indirect conflicts of interest between the institution and the affiliated foundation and those with whom the foundation does business. Under no circumstances shall an institution employee represent both the institution and foundation in any negotiation, sign for both the institution and foundation in a particular transaction, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the institution and the foundation.
 - (7) Prior to the start of each fiscal year, an affiliated foundation must provide the institution chief executive officer with the foundation's proposed annual budget, as approved by the foundation's governing board.
 - (8) Each foundation shall conduct its fiscal operations to conform to the institution's fiscal year. Each foundation shall prepare its annual financial statements in accordance with Government Accounting Standards Board (GASB) or Financial Accounting Standards Board (FASB) principles, as appropriate.
 - (9) Institution chief executive officers shall be invited to attend all meetings of an affiliated foundation's governing board in an advisory role. On a case by case basis, other institution employees may also serve as advisors to an affiliated foundation's governing board, as described in the written foundation operating agreement approved by the Board.
 - (10) The foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent possible or reasonable, to be open to public inquiries related to revenue, expenditure policies, investment

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

performance and/or other information that would normally be open in the conduct of institution affairs.

- (11) A foundation's enabling documents (e.g., articles of incorporation and bylaws) and any amendments are to be provided to the institution. These documents must include a clause requiring that in the event of the dissolution of a foundation, its assets and records will be distributed to its affiliated institution, provided the affiliated institution is a qualified charitable organization under relevant state and federal income tax laws. To the extent practicable, the foundation shall provide the institution with an advance copy of any proposed amendments, additions, or deletions to its articles of incorporation or bylaws. The institution shall be responsible for providing all of the foregoing documents to the Board.
- (12) Foundations may not engage in activities that conflict with federal or state laws, rules and regulations; the policies of the Board; or the role and mission of the institutions. Foundations shall comply with applicable Internal Revenue Code provisions and regulations and all other applicable policies and guidelines.
- (13) Fund-raising campaigns and solicitations of major gifts for the benefit of an institution by its affiliated foundation shall be developed cooperatively between the institution and its affiliated foundation. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by an institution, a foundation will obtain the prior approval of the institution chief executive officer or a designee.
- (14) Foundations shall obtain prior approval in writing from the institution chief executive officer or a designee if gifts, grants, or contracts include a financial or contractual obligation binding upon the institution.
- (15) Foundations shall make clear to prospective donors that:
 - (a) 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 institution; and
 - (b) Responsibility for the governance of the foundation, including investment of gifts and endowments, resides in the foundation's governing board.
- (16) Institutions shall ensure that foundation-controlled resources are not used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval. The institution shall notify the Board, at the earliest possible date, of any proposed purchase of real estate for such

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

purposes, and in such event should ensure that the foundation coordinates its efforts with those of the institution. Such notification to the Board may be through the institution's chief executive officer in executive session pursuant to Idaho Code 67-2345 (1) (c).

c. Foundation Operating Agreements

Each institution shall enter into a written operating agreement with each recognized foundation that is affiliated with the institution. Operating agreements must be signed by the chairman or president of the foundation's governing board, and by the institution chief executive officer. The operating agreement must be approved by the Board prior to execution and must be re-submitted to the Board every two (2) years, or as otherwise requested by the Board, for review and re-approval. Foundation operating agreements shall establish the operating relationship between the parties, and shall, at a minimum, address the following topics:

(1) Institution Resources and Services.

(a) Whether, and how, an institution intends to provide contract administrative and/or support staff services to an affiliated foundation. When it is determined that best practices call for an institution employee to serve in a capacity that serves both the institution and an affiliated foundation, then the operating agreement must clearly define the authority and responsibilities of this position within the foundation. Notwithstanding, no employee of an institution who functions in a key administrative or policy making capacity (including, but not limited to, any institution vice-president 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. The responsibility of this position within the foundation that is performed by an institution employee in a key administrative or policy making capacity shall be limited to the coordination of institution and affiliated foundation fundraising efforts, and the provision of administrative support to foundation fundraising activities.

(b) Whether, and how, an institution intends to provide other resources and services to an affiliated foundation, which are permitted to include:

(i) Access to the institution's financial systems to receive, disburse, and account for funds held (with respect to transactions processed through the institution's financial system, the foundation shall comply with the institution's financial and administrative policies and procedures manuals);

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

- (ii) Accounting services, to include cash disbursements and receipts, accounts receivable and payable, bank reconciliation, reporting and analysis, auditing, payroll, and budgeting;
 - (iii) Investment, management, insurance, benefits administration, and similar services; and
 - (iv) Development services, encompassing research, information systems, donor records, communications, and special events.
 - (c) Whether the foundation will be permitted to use any of the institution's facilities and/or equipment, and if so, the details of such arrangements.
 - (d) Whether the institution intends to recover its costs incurred for personnel, use of facilities or equipment, or other services provided to the foundation. If so, then payments for such costs shall be made directly to the institution. No payments shall be made directly from a foundation to institution employees in connection with resources or services provided to a foundation pursuant to this policy.
- (2) Management and Operation of Foundations.
- (a) Guidelines for receiving, depositing, disbursing and accounting for all funds, assets, or liabilities of a foundation, including any disbursements/transfers of funds to an institution from an affiliated foundation. Institution officials into whose department or program foundation funds are transferred shall be informed by the foundation of the restrictions, if any, on such funds and shall be responsible both to account for them in accordance with institution policies and procedures, and to notify the foundation on a timely basis regarding the use of such funds.
 - (b) Procedures with respect to foundation expenditures and financial transactions, which must ensure that no person with signature authority shall be an institution employee in a key administrative or policy making capacity (including, but not limited to, an institution vice-president or equivalent position).
 - (c) The liability insurance coverage the foundation will have in effect to cover its operations and the activities of its directors, officers, and employees.
 - (d) Description of the investment policies to be utilized by the foundation, which shall be conducted in accordance with prudent, sound practice to ensure that gift assets are protected and enhanced, and that a reasonable return is

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

achieved, with due regard for the fiduciary responsibilities of the foundation's governing board. Moreover, such investments must be consistent with the terms of the gift instrument.

- (e) Procedures that will be utilized to ensure that institution and foundation funds are kept separate.
- (f) Detailed description of the organization structure of the foundation, which addresses conflict of interest in management of funds and any foundation data.

(3) Foundation Relationships with the Institutions

- (a) The institution's ability to access foundation books and records.
- (b) The process by which the institution chief executive officer, or designee, shall interact with the foundation's board regarding the proposed annual operating budget and capital expenditure plan prior to approval by the foundation's governing board.
- (c) Whether, and how, supplemental compensation from the foundation may be made to institutional employees. Any such payments must have prior Board approval, and shall be paid by the foundations to the institutions, which in turn will make payments to the employee in accordance with normal practice. Employees shall not receive any payments or other benefits directly from the foundations.

(4) Audits and Reporting Requirements.

- (a) The procedure foundations will utilize for ensuring that regular audits are conducted and reported to the Board. Unless provided for otherwise in the written operating agreement, such audits must be conducted by an independent certified public accountant, who is not a director or officer of the foundation. The independent audit shall be a full scope audit, performed in accordance with generally accepted auditing standards.
- (b) The procedure foundations will use for reporting to the institution chief executive officer the following items:
 - (i) Regular financial audit report;
 - (ii) Annual report of transfers made to the institution, summarized by department;

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated FoundationsAugust 2009

- (iii) Annual report of unrestricted funds received, and of unrestricted funds available for use in that fiscal year;
- (iv) A list of foundation officers, directors, and employees;
- (v) A list of institution employees for whom the foundation made payments to the institution for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
- (vi) A list of all state and federal contracts and grants managed by the foundation; and
- (vii) An annual report of the foundation's major activities;
- (viii) 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 institution; and
- (ix) An annual report of any actual litigation involving the foundation during its fiscal year, as well as legal counsel used by the foundation for any purpose during such year. This report should also discuss any potential or threatened litigation involving the foundation.

(5) Conflict of Interest and Code of Ethics and Conduct.

A description of the foundation's conflict of interest policy approved by the foundation's governing board and applicable to all foundation directors, officers, and staff members, and which shall also include a code of ethics and conduct. Such policy must assure that transactions involving the foundation and the personal or business affairs of a trustee, director, officer, or staff member should be approved in advance by the foundation's governing board. In addition, such policy must provide that directors, officers, and staff members of a foundation disqualify themselves from making, participating, or influencing a decision in which they have or would have a financial interest. Finally, such policy must assure that no director, trustee, officer, or staff member of a foundation shall accept from any source any material gift or gratuity in excess of fifty dollars (\$50.00) that is offered, or reasonably appears to be offered, because of the position held with the foundation; nor should an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

3. Foundations for Other Agencies

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

Other agencies under the Board's jurisdiction may establish foundations to accept gifts made for the benefit of the agencies' operating purposes. These agencies are subject to the same policies as the institutional foundations. However, agency foundations with annual revenues less than \$100,000 are not required to obtain an independent audit. These agencies must instead submit an annual report to the Board of gifts received and the disposition of such gifts.

4. Idaho Educational Public Broadcasting System Foundations and Friends Groups

Foundations and Friends groups that exist for the benefit of the Idaho Educational Public Broadcasting System (IEPBS) are required by Federal Communications Commission (FCC) regulations to have specific spending authority designated by the Board. Audits of the IEPBS Foundation and Friends groups will be conducted by the State Legislative Auditor.

- a. By action of the Board, the Idaho Educational Public Broadcasting System Foundation, Inc., has been designated to accept gifts made for the benefit of public television in the state of Idaho. The Foundation will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
- b. By action of the Board, the Friends of Channel 4, Inc., has been designated to accept gifts made for the Benefit of KAID TV, Channel 4. The Friends of Channel 4, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
- c. By action of the Board, the Friends of Channel 10, Inc., has been designated to accept gifts made for the benefit of KISU TV, Channel 10. The Friends of Channel 10, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
- d. By action of the Board, the Friends of KUID, Inc., has been designated to accept gifts made for the benefit of KUID TV, Channel 12. The Friends of Channel 12, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

5. Acceptance of Direct Gifts

Notwithstanding the Board's desire to encourage the solicitation and acceptance of gifts through affiliated foundations, the Board may accept donations of gifts, legacies, and

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

August 2009

devises (hereinafter "gifts") of real and personal property on behalf of the state of Idaho that are made directly to the Board or to an institution, school, or agency under its governance. Gifts worth more than \$250,000 must be reported to and approved by the executive director of the Board before such gift may be expended or otherwise used by the institution, school, or agency. Gifts worth more than \$500,000 must be approved by the Board. The chief executive officer of any institution, school, or agency is authorized to receive, on behalf of the Board, gifts that do not require prior approval by the executive director or the Board and that are of a routine nature. This provision does not apply to transfers of gifts to an institution, school, or agency from an affiliated foundation (such transfers shall be in accordance with the written operating agreement between the institution, school, or agency and an affiliated foundation, as described more fully herein).

Exhibit B to Operating Agreement
Form of Loaned Employee Agreement

DISCUSSION DRAFT

AGREEMENT FOR LOANED EMPLOYEE UNIVERSITY OF IDAHO/LASR

THIS AGREEMENT is entered into by and between the UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("University"), and the University of Idaho Laboratory of Applied Science & Research, Inc. ("LASR") and is effective the _____ day of _____, 2010.

BACKGROUND

A. LASR has asked University to make certain university employees available to LASR's for fulfilling various operational requirements of LASR.

B. University has agreed to loan its employee, *****("Loaned Employee"), to LASR to act in the capacity of ***** for LASR pursuant to the terms of this Agreement.

AGREEMENT

The parties agree as follows:

1. Relationship between Loaned Employee and University.

a. Status. At all times under this Agreement, Loaned Employee shall be an [**classified or exempt**], [**fiscal or academic**] year employee of the University subject to all applicable policies and procedures of the Regents and the University. LASR shall have control over all aspects of Loaned Employee's day to day work, and Loaned Employee shall devote 100% of his or her working time to performing services for LASR. Only University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, LASR may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with LASR policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee's contract with the University is contingent upon continuation of this Agreement and in the event this agreement is terminated Loaned Employee's contract with the University will also terminate. Loaned Employee will be considered a loaned employee under the worker's compensation law of the State of Idaho.

b. Compensation. University shall pay Loaned Employee a [**fiscal or

DISCUSSION DAFT

academic**] year salary rate of \$****, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University's regular policies and procedures. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. LASR shall pay University for this cost as provided in Section 3 below.

c. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for LASR travel that is approved in advance by LASR or the University. LASR shall pay University for this cost as provided in Section 3 below.

d. No Prohibition on Leasing Employee to LASR. University represents and warrants to LASR that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to LASR pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans. University shall indemnify, defend, and hold LASR harmless from any breach of the foregoing representations.

2. Relationship between LASR and Loaned Employee.

a. Supervision. Loaned Employee will work full time under the supervision and direction of the LASR Board of Directors. Loaned Employee will report directly to LASR President or her/his designee, who shall determine her/his duties to perform work for LASR.

b. Performance Evaluations. LASR will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. LASR will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

3. Relationship between LASR and University.

a. Lease of Loaned Employee. During the term of this Agreement, so long as Loaned Employee is employed by University, University shall make available to LASR the full time services of Loaned Employee, subject to University's continued employment of Loaned Employee. The furnishing of Loaned Employee shall not be considered a professional service of the University to LASR, nor shall University be considered a contractor of LASR.

DISCUSSION DRAFT

b. University to Provide Salary and Benefits. As indicated above, University shall provide Loaned Employee with a [**fiscal or academic**] year salary rate of \$**** and other University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee. University shall indemnify, defend, and hold LASR harmless for the payment of all items set forth in this Section 3(b) and any claims or losses resulting from the administration of any employee benefits pursuant to any applicable law, including without limitation the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Internal Revenue Code.

c. Reimbursement of Salary and Benefits by LASR. LASR will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits and any reimbursable costs such as travel expenses. Such costs will be billed annually and paid to the University in one annual installment. University 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, LASR shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of five (5) years following the termination of this Agreement.

d. Review of Loaned Employee's Status/Discipline/Termination for Cause. Loaned Employee shall at all times remain an employee of University. Accordingly, University shall have the power to evaluate, discipline, and terminate Loaned Employee in its discretion and in accordance with any of its policies, procedures, or agreements between University and Employee. As provided above, LASR will conduct an annual review of Loaned Employee. LASR will provide a copy of any documents related to its evaluation to the University no later than fourteen (14) days after the evaluation is completed. Based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance, LASR may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with LASR policies and procedures and applicable law. If LASR makes such a determination, LASR shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason LASR is discontinuing the services of Loaned Employee.

e. Indemnification by LASR for Acts of Loaned Employee. University shall have no liability to LASR for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing

DISCUSSION DAFT

activities on behalf of or at the direction of LASR. LASR therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of LASR or others) arising out of or in connection with the activities of the Loaned Employee performed on behalf of or at the direction of LASR. Notwithstanding the foregoing, both parties may maintain any liability insurance coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

f. Compliance With Employment Discrimination Laws.

- 1) LASR agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of LASR. LASR shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. LASR shall indemnify, defend, and hold University harmless from any claims or losses resulting from LASR's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify LASR within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. University shall indemnify, defend, and hold LASR harmless from any claims or losses resulting from University's failure to comply with any applicable employment discrimination laws.

4. General Terms

a. Term, Termination. The term that University shall lease Loaned Employee to LASR shall extend to *****, which is the term of employment specified in Loaned Employee's contract as an exempt employee of the University, unless it is terminated earlier upon the occurrence of any of the following:

DISCUSSION DAFT

- 1) Notice to University Due to Loaned Employee Performance Problems. Pursuant to Section 3(d) above, LASR may discipline Loaned Employee by taking action up to and including termination of this Agreement for cause based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance. If LASR makes such a determination, LASR shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason LASR is discontinuing the services of Loaned Employee.
- 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to LASR upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) day's notice of the default and an opportunity to cure such default within the notice period.
- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to LASR shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee's renewed contract with the University. LASR is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University policies which call for at least 60 days notice if the University will not renew the Loaned Employee's employment agreement) in the event LASR determines that it will not agree to an extension of the term of this Agreement LASR will give University notice of its intention not to extend the term of this agreement at least 60 days prior to the expiration of the term of this Agreement.

b. No Third Party Beneficiaries. The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.

c. 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 Latah County.

DISCUSSION DAFT

d. 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 LASR:

University of Idaho Laboratory of
Applied Science & Research, Inc.,
Chairman

Phone: (208) _____
Fax: (208) _____

_____, ID 83____

To the University:

University of Idaho
Vice President for Research and
Economic Development
1106 Blake Avenue
Moscow, ID 83844-3150

Phone: (208) 885-6155
Fax: (208) 885-4999

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.

e. 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.

f. 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.

g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.

h. Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.

DISCUSSION DAFT

i. Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and LASR and acknowledged by Loaned Employee pursuant to the signature blocks below.

The parties have executed this Agreement effective as of the date set forth above.

UNIVERSITY OF IDAHO

University of Idaho Laboratory for Applied
Science and Research, Inc.

Lloyd Mues, Vice President
Finance and Administration

_____, Chairman

Acknowledgment by Loaned Employee:

Loaned Employee, by his or her signature below, acknowledges the terms of this Agreement between University and LASR and agrees that he or she is an employee of the University that is loaned to LASR pursuant to the terms of this Agreement. Loaned Employee further acknowledges that he or she is a 'loaned employee' pursuant to all state workman's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by workman's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from LASR for such injury in accordance with applicable state workman's compensation laws.

Name: _____

Exhibit C to Operating Agreement
Form of Service Agreement

**DISCUSSION DRAFT - SERVICES AGREEMENT
UNIVERSITY OF IDAHO – LASR**

THIS SERVICES AGREEMENT is entered into by and between the REGENTS OF THE UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("University"), and the University of Idaho Laboratory of Applied Science & Research, Inc. ("LASR").

The University agrees to provide to LASR the following administrative, financial, and accounting, support services.

1. Administrative Support for LASR's general accounting and operations, including cash, receivables, and disbursement processing, preparation of financial statement and work papers for external audit, support for LASR Audit Committee, and support for LASR tax return filing,
2. Administrative support for LASR through the University Human Resources Office, including payroll and benefits management.
3. Administrative support for LASR through the University's Office of Sponsored Programs including support for LASR grant and contract management and compliance.

All University employees who provide support services to the LASR shall remain University employees under the direction and control of the University.

The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the LASR, the nature and location of which shall be in the University's discretion. In addition, the University shall furnish office space and office equipment for use by the LASR's Managing Director the nature and location of which shall be subject to agreement of the parties.

LASR will pay directly to the University a reasonable consideration for the services, facilities, equipment, software and operating supplies provided to LASR pursuant to the Service Agreement based upon agreed upon budgets for the services and operations described herein. In conjunction with the University's annual budget process, the University will prepare and present to LASR for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

The Parties acknowledge that support services provided by the University to LASR hereunder are intended to continue only so long as is necessary for LASR to become a fully self-sufficient operational entity. As LASR gains in self-sufficiency, services provided hereunder may be assumed by LASR operations and discontinued by the University all as per the agreement of the Parties.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University'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 sixty (60) days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Operating Agreement between the University and LASR 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.

UNIVERSITY OF IDAHO

University of Idaho Laboratory of Applied
Science and Research, Inc.

Lloyd Mues, Vice President
Finance and Administration

_____, Chairman

Date: _____

Date: _____

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Exhibit D to Operating Agreement
Articles of Incorporation

ARTICLES OF INCORPORATION
OF
UNIVERSITY OF IDAHO
LABORATORY OF APPLIED SCIENCE & RESEARCH, INC.

The undersigned, being over the age of eighteen (18) years, and for the purpose of forming a nonprofit corporation under the provisions of the Idaho Nonprofit Corporation Act, Title 30, Chapter 3 of the Idaho Code, hereby certifies and adopts the following Articles of Incorporation:

Article One

The name of the corporation is the UNIVERSITY OF IDAHO LABORATORY OF APPLIED SCIENCE & RESEARCH, INC., and its existence shall be perpetual.

Article Two

The address of the registered office of the corporation in the State of Idaho is 110 E. Wallace Avenue, Coeur d'Alene, ID 83814, and the name of its registered agent at that address is Paul W. Daugharty, P.A.

Article Three

The name and mailing address of the incorporator of the corporation is Paul W. Daugharty, P.A., 110 E. Wallace Avenue, Coeur d'Alene, ID 83814.

Article Four

1. The Corporation is formed for the purpose of engaging in any lawful act for which a nonprofit may be organized under Title 30, Chapter 3 of the Idaho Code lawful nonprofit purposes and objectives, which include but are not otherwise limited to, the following:

- a. Conducting research in areas deemed appropriate by the governing Board of Directors and consistent with the charitable, scientific, literary, research, educational, and service goals of the University of Idaho.
- b. Acquiring and disseminating knowledge, supporting the education, research, and public service functions of the University of Idaho.
- c. Executing, administering, letting and performing any and all contracts, subcontracts and agreements desirable and proper in order to perform and complete the activities of the Corporation including, without limitation, contracts and agreements with the University of Idaho and other entities.
- d. Acquiring facilities by lease, purchase, or otherwise, and operating such as may be desirable in order to carry out the charitable, scientific, literary,

research, educational, and service programs of both the Corporation and the University of Idaho.

- e. Receiving real and personal property from public and private sources, receiving grants and other monies from agencies of the United States, grants, contributions and endowments from foundations, public and private corporations, and the general public, without limitation.
- f. Employing personnel and engaging contractors and consultants in order to accomplish the purposes of the Corporation.
- g. Using and/or applying the whole, or any part of, the resources generated by the Corporation exclusively for charitable, scientific, literary, research, educational, or service purposes to benefit the Corporation and the University of Idaho.

2. Stock will not be issued. If and when the Corporation is dissolved, its assets will be distributed pursuant to the provisions of Article Ten. None of the assets will be distributed to private individuals.

3. The Corporation will not have members.

Article Five

The Corporation will seek a federal tax exemption as defined under Internal Revenue Code §501(c)(3) for its own income and will seek a ruling that contributions to the organization are federally tax deductible. If the Corporation becomes tax exempt in either category, it will perform any act required to retain tax exempt status and will refrain from any activities forbidden by Internal Revenue Code §501(c)(3).

Article Six

At all times, the Corporation's investments and investment policy will be consistent with its nonprofit purpose, and income and assets will be generated only to carry out the nonprofit purpose.

Article Seven

1. The number of Directors of this Corporation shall be fixed in the Bylaws and may be changed from time to time by amending the Bylaws.

2. The Corporation shall have Officers as provided in the Bylaws. Such Officers shall be elected or appointed by the Directors of the Corporation at such time, and in such manner, and for such terms as may be prescribed in the Bylaws. The Officers and Directors of the Corporation will not be personally liable for the Corporation's debts and

liabilities, and their personal property is exempt from seizure or levy to pay obligations of the Corporation.

3. The powers of the Corporation will include all powers granted by the State of Idaho to nonprofit Corporations including those set forth pursuant to Title 30, Chapter 3 of the Idaho Code. In addition, the Corporation's powers shall include the following, to the extent not prohibited by the State of Idaho or Federal Law:

- a. To solicit, collect, receive, hold, invest, distribute, and disburse funds in the form of donations, gifts, bequests, and subscription;
- b. The power to accept gifts from individuals, corporations and foundations in furtherance of the Corporation's nonprofit purpose; and
- c. To borrow funds with or without security, on terms at least as favorable as those offered on the open market, to carry out the Corporation's nonprofit purpose as authorized by the Corporation's Directors.

Notwithstanding the foregoing, the Corporation's powers shall be limited as follows:

- i. The Corporation shall not have nor exercise any power of authority expressly, by interpretation or by operation of law, nor shall it directly or indirectly engage in any activity that would prevent it from qualifying and continuing to qualify as described in Article V.
- ii. No part of the assets or net earnings of the Corporation shall ever inure to the benefit of or be distributable to its Directors, Officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts for expenses actually incurred.

4. The initial Directors of this Corporation shall be nine (9) in number and their names and addresses are as follows:

Name	Address

5. The term of the initial Directors shall be until the first annual meeting of the Corporation or until their successors are elected and qualified.

Article Eight

_____. The Corporation's Board of Directors shall not be individually liable for the debts or obligations of the Corporation. Furthermore, no Director or Officer of the Corporation shall be personally liable to the Corporation for civil claims arising from acts or omissions made in the performance of his or her duties, unless the acts or omissions are the result of intentional misconduct.

Article Nine

Power to amend the organization's Articles of Incorporation and Bylaws will rest with the Board of Directors. An amendment can be had by the affirmative vote of sixty-six and two thirds of the Directors, present and voting at a regular or special meeting.

Article Ten

Upon dissolution or final liquidation, the assets of the Corporation remaining after discharge of the debts and obligations of the Corporation shall be distributed exclusively to the University of Idaho, or to such other charitable, scientific, literary, research or educational organizations designated by the University of Idaho which would then qualify under the provisions of the Internal Revenue Code §501(c)(3).

Article Eleven

The undersigned, being the incorporator hereinbefore named, for the purpose of forming a corporation to do business both within and without the State of Idaho, and in pursuance of the Idaho Non-Profit Corporation Act, does hereby make and file these Articles of Incorporation, and does hereby declare and certify that this is her act and deed and the facts herein stated are true.

IN WITNESS WHEREOF, these Articles of Incorporation are executed in duplicate on the ____ day of _____ 2010.

_____, Incorporator

STATE OF IDAHO)
County of Kootena) ss.

On this ____ day of _____, 2010, before me, the undersigned Notary Public in and for said state, personally appeared _____, being first duly sworn under oath, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Public for Idaho
Residing at _____
My commission expires: _____

Exhibit E to Operating Agreement
By Laws

BYLAWS
OF
UNIVERSITY OF IDAHO
LABORATORY OF APPLIED SCIENCE & RESEARCH, INC.

Article One
Guiding Philosophy

The Directors, Officers and employees of the Corporation will strive to:

- * Promote ethical work standards where the highest quality of achievement is aspired to and expected.
- * Appoint and retain the highest caliber of staff and students that can be attracted where integrity, intelligence, self-motivation, expertise, performance, commitment, and fairness are prime considerations.
- * Create an efficient operation in which each individual expeditiously performs multiple tasks, as needed, to maximize quality output at the most attractive cost-performance tradeoff.
- * Create a stimulating, challenging, and fair work environment in which individuals are able to learn and advance professionally.
- * Foster cooperative research endeavors with public and private enterprises including institutions of learning, private businesses, individuals, and government agencies, leading to the dissemination and application of knowledge, discoveries, inventions, and technology for the greatest public good.
- * Enhance the University of Idaho's ability to meet its mission and goals by cooperative use of Corporation and University of Idaho resources including, facilities, faculty, researchers, staff and students.

Article Two
Board of Directors

a. Number. The number of directors on the Board of Directors shall be no fewer than five (5) or more than nine (9). Provided, however, the number shall always be odd.

b. Ex-Officio Directors on the Board. Ex-Officio Directors on the Board shall include the Corporation's President and other key persons as approved by a majority vote of the

Board of Directors. Ex-Officio Directors shall not count against the number of Directors allowed in these Bylaws. Provided, however, the number of Ex-Officio Directors shall not exceed five (5) and Ex-Officio Directors shall not be entitled to vote on any matter coming before the Board of Directors.

c. Manner of Selection and Vacancies. Appointments to fill vacancies or make additions to the Board of Directors shall be made by the President of the University of Idaho with the concurrence of the Board of Directors. Provided, however, the President of the University of Idaho shall request nominations from the Board of Directors. Such recommendations and nominations shall be made by resolution of a majority of the Board of Directors at a regularly scheduled meeting.

The University of Idaho will have representation on the Board of Directors, including the University's Vice-President of Research and the University's Vice-President of Finance and Administration (or their designees), provided however, the University's representation of the Board of Directors shall not constitute a majority of the full membership on the Board.

d. Term. Each Director, whether by initial appointment or appointment to a vacancy, shall serve for a term of two (2) to five (5) years as designated by the Chairman of the Board of Directors. The Chairman shall manage the length and/or start dates of terms to preclude, to the extent possible, more than three (3) new Directors being appointed in an one year. A person filling a vacancy is eligible for reappointment in the same manner as set forth in paragraph (c) above. A Director may resign at any time by delivering a written resignation to the President, a Vice-President, or the Recording Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed by majority vote of the Board of Directors, upon adequate opportunity for hearing before the Board of Directors.

e. Actions by the Board.

- i. The Directors shall only act as a board, and the individual Directors shall have no power as such. At all meetings of the Board of Directors, the presence of a majority of the then total appointed and acting number of Directors shall be necessary and sufficient to constitute a quorum for transacting business. Except as otherwise required herein, in the Articles of Incorporation, or by statute, the action of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. The actions of a majority of the Board of Directors shall be valid and binding, if reduced to writing and signed by such majority, though not taken at a regular or special meeting. Provided, however, such writing must be transmitted to the Recording Secretary with five (5) business days and attached to the minutes of the next meeting of the Board of Directors.

- ii. The Board of Directors provides oversight and direction for the Corporation's policies, procedures and resource allocations, makes recommendations for the development of Corporation projects, assists in the development of effective relationships between the University of Idaho and various Corporation programs, and seeks to enhance and strengthen the research capabilities at the University of Idaho.
 - iii. Ex-Officio Directors have all rights of participation in discussion and contribution, except for voting at meetings of the Board of Directors. Provided, however, they may be excluded from specific matters by the Chair of the Board of Directors or by a majority vote of the Board.
 - iv. The property, affairs, and business of the Corporation shall be subject to oversight by the Board of Directors.
 - v. The Board of Directors may from time to time organize standing or ad hoc committees to provide greater insight into specific areas for which the Corporation's Board of Directors is responsible. Said committees are to be chaired by a Director and serve with other Directors and non-directors who have expertise relating to specific committee responsibilities. Committee chair or member assignments may change at any time as approved by the Board of Directors.
- f. Conflict of Interest.
- i. A Director is considered to have a conflict of interest if: (1.) the Director has existing or potential financial or other interest in a matter before the Board which might reasonably appear to impair the Director's independent, unbiased judgment in the discharge or responsibility; or (2.) the Director is aware that a family member, or any organization of which the family member is an officer, director, employee, member, partner, trustee or controlling stockholder, has existing or potential financial interest in any matter before the Board.
 - ii. Any possible conflict of interest on the part of any Director or officer shall be disclosed to the Board of Directors and made a matter of record, either through an annual procedure or when the interest becomes relevant to any matter before the Board.
 - iii. Any Director having a possible conflict of interest regarding a matter before the Board shall not vote or use his or her personal influence on the matter. Such Director shall not be counted in determining the meeting quorum regarding actions related to the potential conflict. The minutes of the meeting shall reflect such disclosure, abstention from voting, and the resulting quorum for action on the matter. The

foregoing requirements shall not be construed as preventing the Director from briefly stating his or her position in the matter, or from answering pertinent questions from other Directors since his or her knowledge may be of assistance. Provided, however, the Director may not participate in any debate regarding the matter.

- iv. This paragraph (f) shall not prohibit a Director, or an organization in which a Director has a financial interest from pursuing s Corporation purchase or contract.

g. Meetings.

- i. Regular Meetings. The Board of Directors shall meet quarterly unless otherwise determined by the Board. Directors may appear by telephone or streaming video if approved by the Chair. The first regular meeting held during the first quarter of each fiscal year shall be the annual meeting. The specific time and place of each regular meeting shall be fixed by the Chair of the Board of Directors. The purpose of the regular Board meetings shall be to establish or update policies, appoint officers, review finances, review on-going programs, plan and prioritize future directions, and perform any other appropriate functions as necessary for business operations as allowed pursuant to State and federal law. Directors, Ex-Officio Directors and Officers are invited to submit agenda items to the Recording Secretary or Chair of the Board of Directors fifteen (15) days prior to the subject quarterly meeting date. Ten (10) days prior to the meeting date the Recording Secretary shall give written notice of the time, place and location of such meeting to each Director. The Chair of the Board of Directors shall prepare an agenda for issuance by the Recording Secretary with said notice.
- ii. Special Meetings. Special meetings, in addition to a regular meeting, may be called by the Chair of the Board of Directors, or by written request to the Recording Secretary from a majority of the Directors. Written notice of the time, place and subject matter of each special meeting shall be given to each Director at least ten (10) days before the meeting date.

h. Leadership of the Board. The Corporation's Board may elect, by a majority vote, a Chair and Vice Chair, and may appoint a Recording Secretary.

i. Chair. The Chair of the Corporation's Board shall serve to carry out the goals and objectives of the Corporation, and shall:

- * Have and exercise general charge and supervision of the affairs of the Corporation and the Corporation's Board.

- * Provide oversight and guidance to the Corporation's President or designee who is responsible for the administration of the affairs of the Corporation.
- * Do and perform such other duties as assigned by the Board.

ii. Vice Chair. The Vice Chair of the Corporation's Board shall serve to carry out the goals and objectives of the Corporation, and shall:

- * In the absence of the Chair of the Corporation's Board, carry out all obligations and responsibilities assigned the Chair.
- * Do and perform such other duties as assigned by the Chair.
- * Do and perform such other duties as assigned by the Board.

iii. Recording Secretary. The recording Secretary may also serve as Administrative Assistant. Duties shall include:

- * Prepare and distribute notices, agendas, waivers and minutes of all Board meetings.
- * Keep records containing the name of all Directors, Ex-Officio Directors and Officers of the Corporation, including their place of residence.
- * Perform such other duties as assigned by the Chair.

iv. Administrative Assistant. The Administrative Assistant may also serve as Recording Secretary. Duties shall include:

- * Have custody of and maintain the corporate seal and such corporate books, documents, archives and papers as instructed.
- * File all reports required by Idaho law.
- * Perform such other duties as assigned by the Corporation's President or Chair.

Article Three Officers

a. Membership. Corporation Officers may consist of a President, Treasurer, Vice President for Business Operations, and as many Vice Presidents and Division Executives as the Board may appoint. One person may hold more than one position as appointed by

the Board. Provided, however, no person holding two or more offices may act in or execute any instrument in the capacity of more than one office.

b. Appointment. Corporation Officers shall be appointed and/or reappointed at an annual meeting of the Board of Directors and each shall serve until resignation, removal, or until a successor is appointed. A vacancy may be filled by the Board at a regular or special meeting.

c. Removal. Any Officer may be removed by a majority vote of the Board at either a special meeting or regular meeting.

d. Salaries. The salaries or other compensation of Officers shall be reviewed annually, adjusted if necessary and approved by the Board or designated committee. No Officer shall be prevented from receiving a salary or compensation by reason of the fact that they are also a Director.

e. Surety Bonds. If required by the Board, an Officer shall execute to the Corporation a bond in such amount and with such surety or sureties as directed, contingent upon the faithful performance of such Officer's duties, including responsibility for negligence and for the accounting of all property, monies, or securities of the Corporation which may come into his or her hands.

f. Duties and Authority. The responsibilities and authority of Officers and other leaders shall be as follows:

i. President. The President of the Corporation is an Officer and serves at the will of the Board. The duties of the President include:

- * Direct day-to-day business affairs of the Corporation consistent with the direction of the Board.
- * Advise, guide and direct the employees or representatives of the Corporation as they carry out the plans and programs, ensuring consistency with Board approved policy and procedure.
- * Exercise signature authority required by law to commit the Corporation and its assets and resources to the achievement of its mission, limited only by the Articles of Incorporation, these bylaws and Idaho law.
- * Oversee the human resources of the Corporation to assure that each individual is fairly treated in all aspects of their career.

- * Formulate policies for consideration and ratification by the Board.
- * Establish goals and objectives for the Corporation and ensure that operations are being carried out in concurrence with stated goals.
- * Oversee the adequacy and soundness of the Corporation's financial structure.
- * Represent the Corporation with the University of Idaho, funding agencies and the community.

ii. Vice President of Business Operations. Duties of the Vice President of Business Operations include:

- * Assist the Board and the President in the oversight and execution of the business of the Corporation.
- * Manage, review and direct accounting, communications, contracts and pricing, corporate events, information technology and logistics areas and audits, budgets and fiscal planning associated with these areas of assigned responsibility.
- * Assure compliance with laws and regulations as well as terms and conditions of contractual commitments within the specific areas of assigned responsibility. Provide on-site services where necessary in order to meet the needs of individual research organizations or divisions.
- * Have such other powers and duties as the President and Board may determine or as delegated or assigned by the Chair.

iii. Treasurer. Duties of the Treasurer include:

- * Have custody of all funds, property and securities of the Corporation.
- * File or cause to be filed all financial, business and tax reports required by the federal or state tax codes.
- * Execute and issue leases, invoices, receipts, vouchers and checks and make payment on behalf of the Corporation.

- * Keep accurate and full account of monies and obligations of the Corporation, and make such records available to the Board or other Officer upon reasonable times upon request.
- * Have such other powers and duties as the President and Board may determine or as delegated and assigned by the Chair.

iv. Division Executives. Duties of Division Executives, if appointed, include:

- * Have full authority to conduct the oversight and management affairs of the division, including commitment of resources to fully operate the division.
- * Establish and manage projects to assure the success of the research and creative work efforts.
- * Direct the affairs of the division, deciding the scope and depth of the technical direction, making scientific decisions, and driving the success of the division.
- * Assuring that all division activity is in accordance with the non-profit status of the Corporation.
- * Perform other duties as the President and Board may determine.

Article Four
Execution Of Instruments

a. Contracts. All contracts which are to be executed by the Corporation shall be signed by someone authorized by company policies such as the President or Vice President for Business Operations.

b. Other Instruments. Other instruments such as promissory notes, drafts, checks, endorsements and leases shall be signed by the officers or individuals as determined by resolution of the Board.

c. Classified Contracts. Contracts of a classified nature shall be handled and signed by those with specific and appropriate clearances. The Board may, by resolution, authorize such classified contracts to be managed and controlled by the President or Vice President for Business Operations.

d. Loans. No loan or advance shall be contracted on behalf of the Corporation. No negotiable paper or other evidence of its obligation under any loan or advance shall be issue in the Corporation's name. No property of the Corporation shall be mortgaged,

pledged, hypothecated, or transferred as security for payment of any loan, advance, indebtedness, or liability of the Corporation unless and except as expressly authorized by resolution of the Board.

Article Five

Voting Upon Stock Of Other Corporations

Unless otherwise ordered by the Corporation's Board of Directors, the Chair shall have full power and authority on behalf of the Corporation to vote either in person or by proxy at any meeting of the stockholders of any corporation in which the Corporation may hold stock.

Article Six

Gifts And Contributions

The Corporation will seek a federal tax exemption as defined under Internal Revenue Code §501(c)(3) for its own income and will seek a ruling that contributions to the organization are federally tax deductible. If the Corporation becomes tax exempt in either category, it will perform any act required to retain tax exempt status and will refrain from any activities forbidden by Internal Revenue Code §501(c)(3). As such, the following shall apply:

a. Solicitations. Contributions and gifts may be solicited by representatives assigned by the Chair to promote, sponsor and carry out the purposes of the Corporation.

b. Deposit and Use of Contributions. Unless otherwise provided by the donor, all contributions received by the Corporation shall be deposited and held by the Corporation and may be used and disbursed by the Board to promote, sponsor and carry out the purposes for which the Corporation is organized.

c. Restricted Gifts. The limitations and restrictions upon any grant, gift, donation, bequest or devise shall be respected. Restricted gifts shall conform to all applicable state and federal laws and regulations.

d. Operating Expenses. The operating expenses of the Corporation may be defrayed by funds contributed directly to the Corporation or from income and other resources of the Corporation, from whatever source realized, except as restricted or specified in paragraph (c) above.

Article Seven

Liability And Indemnification

Directors, Ex-Officio Directors, Officers and employees of the Corporation shall not be individually or personally liable for the debts or obligations of the Corporation and shall be indemnified by the Corporation against all financial loss, damage, costs and expense incurred by or imposed upon them in connection with or resulting from any civil or criminal

action, suit, proceeding, claim of investigation in which they may be involved by reason of any action taken or omitted to be taken by them in good faith as a Director, Ex-Officio Director, Officer or employee of the Corporation.

Provided, however, the indemnification set forth above is subject to the condition that a majority of the Board, provided a quorum is present, who are not parties to such action, suit proceeding, claim of investigation or, if there be no such quorum, independent counsel selected by a quorum of the entire Board, shall be of the opinion that the involved person or persons exercised and used the same degree of care and skill as a prudent person would have exercised or used under the circumstances, or that such person took or omitted to take such action in reliance upon advice of counsel of the Corporation, or upon information furnished by a Director or Officer of the Corporation, and accepted in good faith and prudence by such person.

The indemnification set forth above shall inure to the benefit of the heirs, executors and personal representative of any Director, Officer or employee and shall not be exclusive of any other rights to which such person may be entitled by law or equity or under any resolution adopted by the Board.

Article Eight
Independent Audit And Fiscal Year

After the close of each fiscal year, the Corporation's Board of Directors shall cause an audit, as required by law or as directed by the Board, of all Corporation assets and accounts to be made. The fiscal year of the Corporation shall be from _____ through _____.

Article Nine
Items of Value

_____ Funds, grants, property, intellectual property, rights, claims, and every other item of value received, acquired, or developed by the Corporation shall be held by the Corporation and invested, sold, reinvested, marketed, or otherwise managed under the direction of the Board.

Article Ten
Corporate Seal

The seal of the Corporation shall be in the form of a circle and shall bear the full name of the Corporation and the date of incorporation. The specific form of the Corporation seal shall be adopted by resolution of the Board.

Article Eleven
Amendments

These bylaws may be altered, amended, repealed, or new bylaws adopted by an affirmative vote of a majority of the Board at any regular or special meeting, subject to prior

notification of such proposed action in a published agenda, and with a copy of the specified changes to be considered provided in advance to each Director.

Approved and adopted by Resolution of the Board of Directors on this ____ day of _____ 2010.

University of Idaho Laboratory of Applied
Science & Research, Inc.

By _____
_____, Chair

Attest:

By _____
_____, Recording Secretary

Transition Plan for the University of Idaho Laboratory for Applied Science, Inc.

The proposed University of Idaho Laboratory for Applied Sciences, Inc. (LASR) is an independent not-for-profit entity affiliated with the University of Idaho. The details of this affiliation are presented in the accompanying documents. LASR will be funded through contracts and grants from federal, state and private sector sources that it wins through a competitive process. Since the University of Idaho will not be using any of its funds to sustain LASR, it is necessary to have a transition plan that will permit LASR to become self sustaining.

In order for LASR to accept contracts and grants from the federal or state government it must have an approved overhead rate. This is a 3 to 6 month process that cannot begin until LASR is established. During that period it is essential that external awards continue to be received in order to keep those university employees that will transition to LASR paid.

Until LASR has its own overhead rate these contracts and grants will come to the University of Idaho and the employees will remain as University of Idaho personnel. Once LASR has an established rate, these awards will be transferred to LASR if it is appropriate to do so. It is anticipated that those University employees that are being paid from those awards will either be transferred to LASR or will be loaned from the University to LASR. Which of these two options is chosen will depend on circumstances.

In order for LASR to operate as an independent entity it will need to have available a number of services which include human resources, accounting and billing as well as award management. These are services that are paid by the overhead charges. Initially, LASR will not have these services or the money to develop them. This necessitates a transition plan in which the university supplies these services for a fee until LASR can supply them itself. An estimate for these services can be made from the University of Idaho's overhead rate. Roughly a quarter of the overhead rate charged by the University is devoted to human resources and grant management (12% out of the 43.4%). In addition, it is appropriate to loan university employees to LASR during the transition period. Under this arrangement, LASR would pay for the employees' salary and fringe benefits out of the awards that they have in-house. This would be a cost neutral arrangement with the University. Once LASR has sufficient awards in-house to pay for their employees and has generated enough overhead to pay for the necessary administrative support, LASR would become a self-sufficient unit with its own employees. Depending on the rate at which LASR secures external funding, this transition period is expected to last several months to a year.

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LASR pro forma budget - year ending June 30, 2011

	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Totals
Operations											
1 Salaries - research - microelectronics	-	-	-	-	4,500	4,500	4,500	15,072	15,072	10,572	54,218
2 Salaries - research - biomolecular	-	-	-	-	-	-	-	-	-	-	-
3 Salaries - service center	-	-	-	-	-	-	-	-	-	-	-
4 Salaries - admin	-	-	-	-	-	-	-	-	-	-	-
5 Salary - director	-	-	-	-	-	-	-	-	-	-	-
6 Fringes	-	-	-	-	1,386	1,386	1,386	4,638	4,638	3,252	16,687
7 Facility rent	-	-	-	-	660	660	660	1,320	1,320	660	5,280
8 Communication	-	-	-	-	-	-	-	-	-	-	-
9 Software & tools	-	-	-	-	-	-	-	-	-	-	-
10 Supplies	-	-	-	-	2,400	2,400	2,400	8,000	8,000	5,600	28,800
11 Travel	-	-	-	-	250	250	250	500	500	500	2,250
12 Legal	-	-	-	-	-	-	-	-	-	-	-
13 UI support	-	-	-	-	899	899	899	3,142	3,142	2,243	11,225
14 Other	-	-	-	-	-	-	-	-	-	-	-
15											
16 Total expenses	-	-	-	-	10,095	10,095	10,095	32,673	32,673	22,828	118,460
17											
Funding sources											
18											
19											
20 Project A											
21 Project A- Salary charge (researcher salary only)	-	-	-	-	4,500	4,500	4,500	4,500	4,500	-	22,502
22 Project A - Fringe Charge	-	-	-	-	1,386	1,386	1,386	1,386	1,386	-	6,930
23 Project A - Other Charge (Service center & other direct charges)	-	-	-	-	2,400	2,400	2,400	2,400	2,400	-	12,000
24 Project A - F&A return - 43.4%	-	-	-	-	3,596	3,596	3,596	3,596	3,596	-	17,981
25											
26 Project B											
27 Project B - Salary charge (researcher salary only)	-	-	-	-	-	-	-	10,572	10,572	10,572	31,717
28 Project B - Fringe Charge	-	-	-	-	-	-	-	3,252	3,252	3,252	9,757
29 Project B - Other Charge (Service center & other direct charges)	-	-	-	-	-	-	-	6,850	6,850	6,850	20,550
30 Project B - F&A return - 43.4%	-	-	-	-	-	-	-	8,973	8,973	8,973	26,918
31											
32 Total Revenues	-	-	-	-	11,883	11,883	11,883	41,530	41,530	29,647	148,354
33											
34 Net	-	-	-	-	1,787	1,787	1,787	8,857	8,857	6,820	29,895
35											

Notes

- 38 For illustration purposes only. These projections are based on new awards to LASR as a separate entity
- 39 Project A and Project B are based on pending awards currently assigned to the UI.
- 40 Salaries and fringe calculated based on current UI employee salaries earned and fringe paid. It is assumed that UI will loan these employees to LASR on a project by project basis
- 41 Facilities rent is prorated based on proportional space needed for each project
- 42 UI support is based on 25% of the levied F&A charges. Rate of 43.4% is the current Federally negotiated rate in use for the UI. LASR F&A rate to be Federally negotiated

CAMBR transition budget - year ending June 30, 2011

	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Totals
Expenses											
1 Salaries - research - microelectronics	61,198	44,726	44,726	44,726	54,726	54,726	54,726	54,726	54,726	54,726	523,732
2 Salaries - research - biomolecular	13,363	13,363	13,363	13,363	13,363	13,363	4,228	-	-	-	84,406
3 Salaries - service center	8,372	8,372	8,372	8,372	8,372	8,372	8,372	8,372	8,372	8,372	83,720
4 Salaries - admin	6,109	6,109	6,109	6,109	6,109	6,109	6,109	6,109	6,109	6,109	61,090
5 Salary - director	-	-	-	-	-	-	-	-	-	-	-
6 Fringes	27,867	22,497	22,497	22,497	25,597	25,597	22,765	21,454	21,454	21,454	233,678
7 Facility rent	-	-	-	-							-
8 Communication	1,320	1,320	1,320	1,320	1,320	1,320	1,320	1,320	1,320	1,320	13,200
9 Software & tools	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500	105,000
10 Supplies	500	500	500	500	500	500	500	500	500	500	5,000
11 Travel	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	10,000
12 Other (subcontract to employ expertise)	-	-	10,648	10,648	10,648	10,648	10,648	10,648	10,648	10,648	85,184
13											
14 Total expenses	130,229	108,387	119,035	119,035	132,135	132,135	120,168	114,629	114,629	114,629	1,205,010
15											
16 Funding sources											
17											
18 Existing grants - salaries	342,179										342,179
19 Existing grants - fringe	171,366										171,366
20 Existing grants - other											-
21 Pending portion - existing grants		545,520									545,520
22 F & A return	33,364			33,364			33,364			33,364	133,456
23 State funding	150,945										150,945
24 Other											-
25											-
26 Funding Balance	697,854	1,113,145	1,004,758	919,088	800,053	667,918	569,148	448,980	334,350	253,085	1,343,466
27 Expenses	130,229	108,387	119,035	119,035	132,135	132,135	120,168	114,629	114,629	114,629	1,205,010
28 Net remaining funds	567,625	1,004,758	885,724	800,053	667,918	535,784	448,980	334,350	219,721	138,456	138,456
29											
30 Notes											
31											
32 This sheet shows the runoff of existing CAMBR grants. New grants received directly by or transferred to LASR are shown on a separate sheet as an example of how LASR will cash flow.											
33 The forecast above assumes that a new engineer will be added in January to replace one of two recently resigned engineers.											
34 Once LASR is approved a new federal overhead rate will be applied for to allow a mechanism to transfer projects to LASR. No projects will be transferred until the new rate is set.											
35 During the transition phase, some employees may be loaned to LASR by the University subject to current policies covering such loaned employees.											
36 During and after the transition phase some functions, such as HR, accounting, grant administration and the like, may provided by the University and reimbursed by LASR											
37 No new employees will be hired by LASR until new grants have either been awarded directly or transferred from CAMBR.											
38 Additional \$780,000 in current grants and contracts are not represented in this spreadsheet as they are designated for specific use under terms and conditions of the contracts											
39											

IDAHO EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND

SUBJECT

Sub-Lease: Idaho Educational Services for the Deaf and the Blind (IESDB) and Gooding Recreation District

REFERENCE

June 2009	Lease by the State Board of Education (SBOE) to the Idaho School for the Deaf and the Blind (ISDB)/Idaho Bureau of Educational Services for the Deaf and the Blind (IBESDB) of certain premises on Idaho School for the Deaf and the Blind's (ISDB) main campus.
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APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.5.b

BACKGROUND/DISCUSSION

IESDB (lessee) has a sublease with the Gooding Recreation District for use of the school's gym and swimming pool. On September 15, 2009, Gooding Recreation District entered into an agreement with the North Canyon Medical Center to sub sublease the swimming pool for physical therapy. The IESDB is seeking ratification of this sub sublease per the terms of the lease.

Additionally, the Gooding Recreation District requests the use of sports fields on the ISDB campus. The Recreation District utilizes the fields for practice and recreational games. Attached is a proposed amended sublease which incorporates the use of the sports fields for an additional \$500/year. The additional \$500/year will be utilized for water and maintenance of the sports fields.

Finally, Board staff requests that the Board authorize the Executive Director of the State Board of Education to review and approve any future subleases.

STAFF COMMENTS AND RECOMMENDATIONS

This is a basic transaction in which the lessee, pursuant to the lease agreement, is seeking ratification from the lessor (State Board) for the sub sublease of a campus facility. In addition, the lessee seeks approval to amend the sublease to expand the scope of leased facilities to the sub-lessee.

The terms of the lease provide that "any changes to existing subleases, termination of subleases, or execution of new subleases will require the express consent of the Lessor."

Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 14, 2010

ATTACHMENTS

Attachment 1 – Proposed Lease: IESDB/Gooding Rec. District	Page 3
Attachment 2 – Letter – Gooding Rec. District, Sub Sublease	Page 9

BOARD ACTION

I move to ratify the Gooding Recreation District's request to sub sublease the swimming pool on the campus of the Idaho School for the Deaf and the Blind to the North Canyon Medical Center, to approve the amended sublease between the Idaho Educational Services for the Deaf and the Blind and the Gooding Recreation District as presented. I move to authorize the Executive Director of the State Board of Education to review and approve any changes to existing subleases, termination of subleases, or execution of new subleases pursuant to the terms of the lease.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GYMNASIUM, SPORTS FIELD AND SWIMMING POOL LEASE

This AGREEMENT, made and entered into _____, 2010, by and between the Idaho Educational Services for the Deaf and the Blind, Lessor, and the Gooding Recreation District, Gooding, Idaho, Lessee.

WHEREAS, Lessor, as a part of the facilities of the Idaho Educational Services for the Deaf and the Blind, (IESDB) located in Gooding, Idaho, ~~owns~~ leases an indoor swimming pool, gymnasium; and sports field ~~allocated~~ located on the campus of the Idaho School for the Deaf and Blind (ISDB), and

WHEREAS, for the purpose of this Agreement, the "sports field" include a baseball field diamond which is located on the ISDB campus.

WHEREAS, Lessee has expressed a desire to lease the gymnasium and indoor swimming pool and sports field and accompanying facilities with the intent to manage and operate recreation programs and a city swim program; and

WHEREAS, the Gooding Recreation District does not have a gymnasium; and

WHEREAS, the Gooding Recreation District does not have a municipal indoor swimming pool;

WHEREAS, the Gooding Recreation District does not have a baseball field or diamond; and

NOW THEREFORE, it is agreed:

1. Lessee will be entitled to use the gymnasium, sports field and indoor swimming pool of Lessor located in Building #510 from October 1, 2009 through September 30, 2010.
2. Lessee agrees to pay a rental sum of \$11,000.00 to be paid in two equal installments of \$5,500.00 on December 1, 2009 and April 1, 2010.
3. Lessee agrees to pay Lessor the additional sum of \$1,500.00 to cover annual cost of property insurance no later than 10 days after the beginning of the new contract period. In the event of any loss(es), Lessee shall be responsible for payment of the deductible(s).
4. Lessee agrees to pay IESDB all charges for water consumed by the gymnasium/pool complex.

5. Lessee accepts the gymnasium, sports field and swimming pool as is, with any and all defects if any, which may exist as of the date of the execution of this Lease Agreement.
6. Lessee will only use the gymnasium, sports field and swimming pool for the purpose of the Gooding Recreation District's authorized programs; and proper certification from the Idaho Department of Health and Welfare to operate such programs will be obtained and a copy furnished to Lessor.
7. Lessee agrees to exclusive management and maintenance of the gymnasium, sports field and swimming pool during the period of occupancy. Lessee shall, at Lessee's expense during the period of occupancy, ensure the following are provided and paid for in connection with the operation of Lessor's gymnasium and pool.
 - a. All utilities necessary to operate the gymnasium, sports field and swimming pool.
 - b. All supplies necessary to operate the gymnasium, sports field and swimming pool including routine replacement of interior light-bulbs. Lessor will maintain outside security lights.
 - c. Cleaning and normal maintenance of the gymnasium, sports field and swimming pool area, dressing rooms, lavatories and other surrounding areas. At a minimum, cleaning will be done on a weekly basis or more often as required to keep the gymnasium, pool and adjacent areas in a clean and sanitary condition. Failure to comply with this requirement will result in Lessor taking necessary steps to hire a cleaning service with subsequent costs charged to the Gooding Recreation District.
 - d. Normal maintenance of the sports field.
 - e. All salaries and other expenditures related to the ongoing operation of the gymnasium, sports field and swimming pool will be paid by the Gooding Recreation District.
8. All repairs up to \$500 per repair necessary to maintain the gymnasium, sports field and swimming pool in proper working order for the life of the lease are the responsibility of the Lessee and shall be at the Lessee's expense. Lessee shall also be responsible for any repairs over \$500 in the event such repairs are required as a result of Lessee's negligence and/or the result of actions of the Lessee's participants, clients or users.
9. Lessor will not be responsible for any capital improvements to the gymnasium, sports field and swimming pool, and reserves the right to terminate the lease should repairs over \$500 be required in order to continue operation of the gymnasium, sports field or swimming pool. Should Lessee voluntarily undertake repairs not due to negligence of Lessee which are over \$500, Lessor

shall not be responsible for the cost of such repairs. Any repairs over \$500 must be approved in writing by the Lessor.

10. Lessee shall defend, indemnify and hold harmless the Lessor from and against all claims, damages, costs, legal fees, expenses, actions and suits whatsoever including but not limited to the injury or death of others or any employee of the Lessee arising out of Lessee's use of the gymnasium, swimming pool and sports field.
11. Lessee shall provide Lessor, no less than ten days following the start of this lease, a Certificate of Insurance showing that there is in effect a current policy providing minimum limits of Comprehensive General Liability Insurance in the amount of \$500,000.00. Idaho Educational Services for the Deaf and the Blind shall be listed as an "Additional Insured". The insurance policy and certificate of insurance shall further state, "This policy is intended to be primary to and not contributory with any other insurance maintained by or on behalf of the State of Idaho or its agencies."
12. Lessee shall have the right and responsibility to:
 - a. Determine days and hours the gymnasium, sports field and swimming pool will be available for use by ~~the~~ ISDB, the Gooding Recreation District or the general public;
 - b. Establish fees to be charged for the use of the gymnasium, sports field and swimming pool by members of the general public.
 - c. Employ certified lifeguards, a pool manager and/or recreation director as required by statutes and regulations of the State of Idaho, and its agencies, and be responsible for payment of such personnel.
13. Lessor agrees to work with and assist Lessee and its agents in the scheduling and utilization of the gymnasium, sports field and swimming pool. It is agreed and understood that ~~the~~ ISDB and/or any entities affiliated with ~~the~~ IESDB or ISDB shall be provided first priority or preference for any and all scheduled events for the gymnasium, sports field and swimming pool. The Department of Recreation programs shall be given second preference for any and all scheduled events for the gymnasium, sports field, and swimming pool. That any remaining times or openings within the schedule can be assigned to and/or delegated to other community entities or the general public at the sole discretion of lessee and/or in a manner to be determined by the Lessee.
14. Lessee has represented to Lessor that adequate Lessee funds in the amount of \$14,000.00 at a minimum are available for the execution of the terms of this lease.

15. Lessee shall maintain the structure of the gymnasium, swimming pool, and sports field so that they are in compliance with all fire codes under Idaho law. No building modifications can be made by Lessee without specific written property approval, or that will violate any safety codes.
16. Lessee cannot change the building and door locks without giving Lessor proper notice and shall provide a reasonable number of keys to Lessor to ensure continued and uninterrupted access to the gymnasium, sports field and swimming pool.
17. Lessee shall comply with Idaho Executive Order No. 92-2 which prohibits smoking in any building on the IESDB campus. In addition, Lessee shall comply with the State Board of Education's resolution adopted March 18, 1994 establishing a no smoking requirement. Pursuant to this resolution, smoking is not permitted in or on any of the buildings or property of the Idaho Educational Services for the Deaf and the Blind.
18. Lessee shall provide a copy of the inspection reports to Lessor, including inspection reports from the Division of Building Safety.
19. Lessor shall provide and maintain:
 - a. Fire Alarm System
 - b. Fire Extinguishers
 - c. Emergency Lights
 - d. Exit Lights
20. Assignment: This lease shall not be assigned nor shall the premises be sublet, in whole or in part, without prior written consent of Lessor.

THIS AGREEMENT may be terminated by either party upon giving a thirty (30) days written notice to the other party. With the consent of both parties, this contract may be terminated without thirty (30) days notice.

IN WITNESS WHEREOF, the parties have caused their company names to be hereunto subscribed pursuant to the resolutions duly passed.

~~IDAHO DEPARTMENT OF EDUCATION~~ STATE BOARD OF EDUCATION

by _____
~~Tom Luna~~ Mike Rush
~~Superintendent~~ Executive Director

Date

LESSOR

IDAHO EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND

by _____
~~Aylee Schaefer~~ Brian Darcy
~~Interim~~ Administrator

Date

LESSEE

GOODING RECREATION DISTRICT

by _____
Joleen Toone
Executive Director, Board of Directors

Date

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**Gooding Recreation District
202 14th Ave East
Gooding, ID 83330**

April 26, 2010

Idaho Educational Services for the Deaf and Blind
State Board of Education
1450 Main Street
Gooding, ID 83330

Dear IESDB and State Board of Education:

The Gooding Recreation District (GRD) is requesting your permission to sub lease the Gooding Indoor Pool, which we are currently leasing from the Idaho Educational Services for the Deaf and Blind.

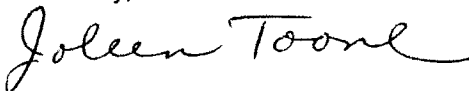
We would be sub-leasing to the North Canyon Medical Center, formerly the Gooding County Memorial Hospital, for their Aqua Therapy program.

The Aqua Therapy program would use the pool on Tuesdays and Thursdays, for 4 hours each day.

The North Canyon Medical Center agrees to pay the Gooding Recreation District, \$1500.00 (see agreement) to offset the cost of utilities, chemicals, training of lifeguards and maintenance to the facility.

We appreciate your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Joleen Toone".

Joleen Toone
President
Gooding Recreation District



**Space Utilization Agreement
Gooding Recreation District and North Canyon Medical Center**

This Agreement is made and entered into effect September 15th, 2009, by Partners In Healthcare, Inc dba North Canyon Medical Center, hereinafter referred to as "NCMC" and The Gooding Recreation District, hereinafter referred to as "GRD".

WITNESSTH:

Whereas, GRD operates a building located at 315 14th Avenue East in Gooding, ID, and
Whereas, NCMC wishes to lease a portion of said building designated as "the pool and locker rooms", and
Herein, both parties agree to the following:

SECTION I – TERM & TERMINATION

- 1.1 **Term.** The term of this agreement shall be effective for two (2) years from the date of August 12th, 2009 and thereafter renegotiated within ninety (90) days of the anniversary date.
- 1.2 **Termination.** Either party may terminate this agreement with thirty days written notice to the other party, except that termination cannot be used as a process to renegotiate rates.
- 1.3 **Effect of Termination.** Upon termination of this agreement, the right of use of facilities will terminate.

SECTION II - OBLIGATIONS

- 2.1 **Utilization of Space.** GRD shall allow the space known as the "the pool and locker rooms" and more specifically outlined under "Exhibit A", to be utilized by NCMC for the purposes of Aquatic Therapy for a monthly fee as designed under section III. Additional hours will also be made available for an additional fee as set under section III.
- 2.2 **Dates of Use.** NCMC will work with GRD to schedule dates and times in advance which meet the needs of the NCMC, and fits within the schedule of other services being provided by GRD in the Pool and Locker Rooms. Due to NCMC's generous funding of the renovation of such pool and locker rooms, NCMC will have the ability to expand their utilization to meet the needs of their rehabilitation patients; given that such additional hours/times will be charged to NCMC at the rate calculations shown in Exhibit A.
- 2.3 **Rules.** NCMC will be expected to meet common standards and regulations of pool use.
- 2.4 **Access.** GRD will allow access during scheduled times and provide appropriate access keys.
- 2.5 **Maintenance.** GRD will ensure Pool and Locker Rooms are kept clean, are well maintained, and that the pool is set at appropriate temperature per Aquatic Therapy guidelines. NCMC is not responsible for repairs or maintenance.
- 2.6 **Damage and Destruction.** If the space or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for NCMC's purposes, then NCMC shall have the right within thirty (30) days notice to GRD to terminate this Agreement as of the date of such damage. In the event of minor damage to any part of the space, and if such damage does not render the space unusable for NCMC's purposes, GRD shall promptly repair such damage. Failure of GRD to repair damages due to funding or other unforeseen reductions in GRD capabilities will be considered a breach of this agreement, and will specifically result in the termination of this lease and all obligations relating within. NCMC shall be relieved from paying rent and other charges during any portion of the term that the space are inoperable or unfit for occupancy or use, in whole or in part, for NCMC's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to NCMC. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond NCMC's reasonable control and which renders the space, or any appurtenance thereto, inoperable or unfit for occupancy in whole or in part, for NCMC's purposes.
- 2.7 **NCMC Insurance.** NCMC shall maintain a policy of comprehensive general liability insurance on the space and common area related thereto. NCMC shall also maintain professional liability insurance (malpractice) insurance on its agents and employees.



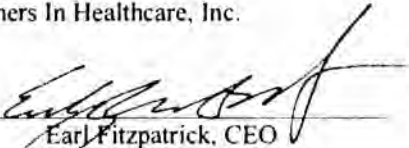
NORTH CANYON
MEDICAL CENTER

- 2.8 Entire Agreement of the Parties. This Agreement supersedes any and all Agreements, either written or oral, between the parties hereto with respect to the subject matter contained herein and contains all of the covenants and Agreements between the parties with respect thereto. Each party to this Agreement acknowledges that no representations, inducements, promises or Agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other Agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 2.9 Indemnification. Each party agrees to indemnify and hold harmless the other party, its agents, employees or affiliates, against and from all damages arising solely from the illegal, negligent or intentional acts or omissions of the indemnitor or the indemnitor's agents, employees, affiliates, board members, successors or medical staff.

SECTION III - COMPENSATION

- 3.1 Compensation. In consideration for GRD allowing utilization of their space by NCMC, GRD shall be paid a fee as calculated per exhibit A.
- 3.2 Charging of Class Participants. NCMC is an Independent Contractor and a separate entity or person from GRD. GRD will not charge or collect funds from NCMC's class participants for services provided NCMC. NCMC shall not charge class participants for GRD services or Building Utilization. Each party will collect for their own services.

NCMC:
Partners In Healthcare, Inc.

By: 
Earl Fitzpatrick, CEO
267 North Canyon Drive
Gooding, Idaho 83330
Phone: 208-934-4433 X1105
Fax: 208-934-8760

GRD:
Joleen Toone, Board President


By: 
Joleen Toone, Board President



Exhibit A

NCMC will compensate GRD on a monthly basis for pool and locker utilization per the attached lease agreement. Such monthly expense will be based on cost of the prior quarter and the monthly utilization.

Each quarter, GRP will provide to NCMC the overall three month costs associated with the direct operation of the pool including chemicals used, general cleaning services, pool activity related employment expense, and utilities. Such records will be as detailed as possible and explained in full at the request of NCMC. As guard utilization is charged separately, cost of training and hours for lifeguards will not be included in such calculation. The three months of cost will be calculated to a daily rate.

This quarterly calculation of daily rate will then be used as a daily rate. The rate will be charged to NCMC based on their utilization (number of days the pool is utilized by NCMC) during the next three months. GRD will invoice NCMC monthly, utilizing this rate, until such quarterly rate is recalculated.

Example:

Quarter 1 costs:	\$14,000
Days in Quarter:	93
Cost per day:	\$150.53 (new rate per day for the next three months)
Days NCMC (Month 4)	10
Cost per day (from above)	\$150.53
Invoice to NCMC	\$1,505.53

Additional Days

While it is expected that NCMC will be utilizing the pool 2 days per week for Aquatic Therapy, there may be requirements to increase pool utilization. Such additional days will be naturally billed as part of the overall monthly utilization and charged at the quarterly rate per day as calculated above.

Additional Staff

It is expected that a certified lifeguard will be on duty during all sessions. Should NCMC request and GRD provide such staff, GRD shall invoice, as part of the regular invoice, an additional amount to include the cost of such lifeguards with a fee of 5% added for providing the service. Timesheets and employee rate information will be provided by GRD with any such billings as an attachment to the monthly invoice.