

**AUDIT COMMITTEE
APRIL 19, 2012**

TAB	DESCRIPTION	ACTION
1	IDAHO STATE UNIVERSITY Foundation Operating Agreement	Motion to approve
2	EASTERN IDAHO TECHNICAL COLLEGE Foundation Operating Agreement	Motion to approve

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AUDIT
APRIL 19, 2012

IDAHO STATE UNIVERSITY

SUBJECT

Board approval of Idaho State University operating agreement with Idaho State University Foundation

REFERENCE

October 2008	Board approval of Idaho State University operating agreement with ISU Foundation
March 2012	Audit Committee reviewed and recommended Board approval of the revised operating agreement

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Idaho State University (ISU) worked with the ISU Foundation to revise the existing operating agreement which was approved by the Board in October 2008. The revisions included immaterial changes including a more thorough listing of the duties of the Fiscal Officer in the Loaned Employee Agreement which is Exhibit A of the operating agreement. The Audit Committee reviewed and recommended approval of the revised operating agreement and the changes to Exhibit A, Loaned Employee Agreement.

Other changes to documents referenced in the operating agreement include immaterial revisions enumerated on page 3. These documents, like Bylaws and Articles of Incorporation, are ancillary to the operating agreement and the Loaned Employee Agreement. Since the Committee desired to retain independence between the foundation and the institution and Board, the Committee felt it was unnecessary for the Board to approve the supplementary documents.

IMPACT

Approval of the operating agreement brings the Foundation into compliance with Board policy V.E.

ATTACHMENTS

Attachment 1 – Summary of Changes to Ancillary Documents	Page 3
Attachment 2 – ISU Foundation Operating Agreement	Page 5

STAFF COMMENTS AND RECOMMENDATIONS

Board policy requires a foundation of an institution be brought before the Board to be formally recognized as a nonprofit corporation or affiliated foundation to benefit a public college or university in Idaho. Each foundation shall be brought into substantial conformance with these policies and upon recognition by the Board, the foundation is ratified, validated, and confirmed, and it shall be deemed

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to have been organized as if its organization had taken place under authority of this policy. The operating agreement must be approved by the Board prior to execution and must be re-submitted to the Board every three (3) years, or as otherwise requested by the Board, for review and re-approval. The operating agreement addresses the topics outlined in Policy V.E.

Staff recommends approval.

BOARD ACTION

I move to approve the revisions to the Operating Agreement between the Idaho State University Foundation, Inc. and Idaho State University as presented, and to approve the revisions to the Agreement for Loaned Employee attached as Exhibit A.

Motion by _____ Seconded by _____ Carried Yes ___ No ___

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April 19, 2012

Idaho State University Foundation
Operating Agreement
Summary of Changes Ancillary Documents

1. In Exhibit "D", *Articles of Incorporation* –
 - a. Inserted a copy of the approval of the articles of incorporation of the Idaho State University Foundation dated March 17, 1967. This insertion is the 2nd un-numbered document following page 8 of the Articles of Incorporation.
 - b. Inserted a signed copy of the "Articles of Amendment" dated June 8, 2006, which replaces the older certificate of the articles of incorporation, and the "Amended and Restated Article III Purposes. These insertions are the 7th and 8th un-numbered pages following page 8 of the Articles of Incorporation.
2. In Exhibit "E", *Amended and Restated Bylaws of Idaho State University Foundation, Inc.* - Immediately following the title page the table of contents was changed, as well as the body of the Bylaws to reflect the deletions and additions noted below:
 - a. Removed Article VI, "Conflict of Interest" from the table of contents and from the exhibit because it was and continues to be included separately as Exhibit "F". With this removal, Article VI now becomes "Miscellaneous," which was the previous Article VII.
 - b. Removed Article VII, "Audits and Reports" from the table of contents and from the exhibit due to redundancy. It was and continues to be included as Article VI "Audits and Reporting Requirements in the main body of the Operating Agreement. With this removal, Article VII now becomes "Amendments," which was the old Article IX.
 - c. Added a new section (6.12) to the renumbered Article VI (Miscellaneous). This new section is titled "Staff Conflicts of Interest" and makes reference within the Bylaws to Exhibit "F", *Conflicts of Interest*.
 - d. Added an updated Secretary's Certification at the last page of the Bylaws.
3. In Exhibit "F", *Conflict of Interest*, added item number 11, titled "Material Gifts." This section says; "No director, trustee, officer, or staff member of the 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 shall an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis."

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**OPERATING AGREEMENT
BETWEEN
IDAHO STATE UNIVERSITY FOUNDATION, INC.
AND
IDAHO STATE UNIVERSITY**

THIS AGREEMENT, entered into as of this ~~5th~~ _____ day of ~~February~~, _____ ~~2009~~ 2011, is between Idaho State University, herein known as “University” and the Idaho State University Foundation, Inc., herein known as “Foundation”.

WHEREAS, the Foundation was organized and incorporated in 1967 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University.

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

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

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

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

WHEREAS, the parties hereby acknowledge that they will at all times conform to and abide by, the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations policy, § V.E., and that they will submit this Agreement for initial prior State Board of Education ("State Board") approval, and thereafter every ~~two~~-three (3~~2~~) years, or as otherwise requested by the State Board, for review and re-approval.

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

ARTICLE I

Foundation's Purposes

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

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

ARTICLE II

Foundation's Organizational Documents

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

ARTICLE III

University Resources and Services

1. University Employees.

a. *University/Foundation Liaison:* The University's Vice President for University Advancement shall serve as the University's Liaison to the Foundation.

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

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

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

terms as other full-time University employees of the same classification as the *Finance Director*. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the *Finance Director* including such expenses as salary, payroll taxes, and benefits.

- iii. The Foundation and the University shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the *Finance Director* is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the *Finance Director*, including the following:

1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.
2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University.
3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation president or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or University requirements.

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

d. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University 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.

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

3. University Facilities and Equipment. The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. 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, Exhibit "B" hereto.

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

ARTICLE IV

Management and Operation of Foundation

1. Gift Solicitation.

a. *Authority of Vice President for University Advancement.* All Foundation gift solicitations shall be subject to the direction and control of the Vice President for University Advancement.

b. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

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

2. Acceptance of Gifts.

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

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

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

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

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

4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions [with the University](#). The Foundation may supplement or change this designation with written notice to the University; provided, however, in no event may the person with Foundation signature

authority for financial transactions be a University employee nor a “Loaned Employee” as that term is used in this Agreement.

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

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

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

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

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate, password protected accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some

Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis. Further, the Foundation shall make data available to external auditors as necessary to complete audit responsibilities.

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

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

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

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

ARTICLE V

Foundation Relationships with the University

1. Access to Records. The Foundation shall establish and enforce policies to protect donor confidentiality and rights. The donor database, as well as other data, materials and information of the Foundation pertaining to past, current or prospective donors, are proprietary to the Foundation and constitute its confidential information and trade secrets. The University shall not access such information except in compliance with the Foundation's donor confidentiality policies. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of the server and software relevant to the database.

The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The University shall, at any time, have access to the financial records of the Foundation. The scope of this right of the University shall be construed as broadly as needed to conduct a complete audit of the Foundation as such an audit would be conducted under generally accepted accounting procedures if the University should so require. Provided, however, that the University need not conduct an audit to be provided such access, but shall be provided such access at any time.

The University's access shall not include donor specific data such that would provide individually identifiable information about donors or their donations made to the Foundation.

2. Record Management.

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

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

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

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

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

5. Establishing the Foundation's Annual Budget. The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing to the Foundation's Treasurer and Assistant Treasurer. If the request is for reimbursement, the University shall provide appropriate documentation to the Foundation to ensure that the funds to be reimbursed were used in compliance with donor intent. ~~by March 1 of each year.~~

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

7. Supplemental Compensation of University Employees. No supplemental compensation of University employees may be made by the Foundation. Provided the Foundation may reimburse the University for those benefits which are necessary for its normal course of operations, including, but not limited to, travel and continuing professional education. This is not intended to proscribe reimbursement by the Foundation of the University's expenses associated with "Loaned Employees" as set forth elsewhere in this Agreement, nor the payment of funds by the Foundation to the University in support of endowed chairs or similar faculty positions.

ARTICLE VI

Audits and Reporting Requirements

1. Fiscal Year. The Foundation and the University shall have the same fiscal year.
2. Annual Audit. On an annual basis, the Foundation shall have an audit conducted by a qualified, independent certified public accountant who is not a director or officer of the Foundation. The annual audit will be provided on a timely basis to the University's President and the Board, in accordance with the Board's schedule for receipt of said annual audit. The Foundation's Annual Statements may be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the University as defined by the Government Accounting Board Standards Board (GASB). Accordingly, the University, which follows a GASB format, is required to include the Foundation in its Financial Statements. Therefore, if the Foundation presents its audited Financial Statement under FASB, Schedules reconciling the FASB Statements to GASB standards must be provided to the State of Idaho in the detail required by GASB standards. The annual audited Financial Statements and Schedules shall be submitted to the University's Office of Finance and Administration in sufficient time to incorporate the same into the State of Idaho's Comprehensive Annual Financial Review statements.

3. Separate Audit Rights. The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records.

4. Annual Reports to University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the University President and the State Board setting forth the following items:

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

ARTICLE VII

Conflict of Interest and Code of Ethics and Conduct

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

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

3. Contractual Obligation of University. The Foundation 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 and, if applicable under law or policy, the State Board of Education. University approval of any such contract shall comply with policies of the State Board of Education with respect to approval of University contracts.

4. Acquisition or Development of Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board and where appropriate, the Idaho Legislature, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII

General Terms

1. Effective Date. This Agreement shall be effective on the date set forth above.
2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the

Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event the parties are unable to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

3. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved to the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.

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

5. Providing Document to and Obtaining Approval from the University. Unless otherwise indicated herein, any time documents are to be provided to the University or any time 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.

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

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

To the University:

President
Idaho State University
921 South 8th Ave. Stop 8310
Pocatello, ID 83209-8410

To the Foundation:

Vice President for Advancement
Idaho State University
921 South 8th Ave. Stop 8024
Pocatello, ID 83209-8024

Finance Director
Idaho State University Foundation
921 South 8th Ave. Stop 8050
Pocatello, ID 83209-8050

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

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

10. Indemnification. The University and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.

11. Dispute Resolution. The parties agree that in the event of any dispute arising from this ~~MOU~~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, the dispute will be referred to the Chair of the Foundation and the University President. If the Foundation and University President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are follows in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this ~~MOU~~ 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.

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

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

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

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

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

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

Idaho State University

By: _____
Its: President

Idaho State University Foundation, Inc.

By: _____
Its: President

EXHIBIT "A"

Loaned Employee Agreement

EXHIBIT "A"

AGREEMENT FOR LOANED EMPLOYEE IDAHO STATE UNIVERSITY/IDAHO STATE UNIVERSITY FOUNDATION

THIS AGREEMENT is entered into by and between IDAHO STATE UNIVERSITY, a state educational institution, and a body politic and corporate organized and existing under the laws of the state of Idaho ("University"), and IDAHO STATE UNIVERSITY FOUNDATION, a private nonprofit corporation ("ISUF") effective for the period June 26, 2011 through June 23, 2012.

BACKGROUND

A. The ISUF, incorporated as a 501(c)(3) organization in 1967, raises and manages private funds for the benefit of the University, and

B. University has agreed to loan its employee, NAME ("Loaned Employee"), to ISUF to act in the capacity of Fiscal Officer for ISUF.

AGREEMENT

The parties agree as follows:

1. Relationship between Loaned Employee and University.

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

b. Loaned Employee will be paid at a fiscal year salary rate of \$AMOUNT, payable on the regular bi-weekly paydays of the University. 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.

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

2. Relationship between ISUF and Loaned Employee.

a. Loaned Employee will work full time and shall be under the exclusive supervision, direction and control of the ISUF Board of Directors during the performance of her/his duties under this Agreement. Such duties shall include, but shall not be limited to,

supervision of the back office operational processing of gifts and reporting to various stakeholders; responsibility for the management and operations of the donor system (Viking); support of development staff and other personnel associated with the utilization of the donor system; relations with the University relative to IT support and security; oversight and management of ISUF operational policies; and, direct supervision of the management assistant, program information coordinator, office specialist II, technical records specialist, and student inter, and others who may be assigned from time-to-time. Loaned Employee will report directly to ISUF President or her/his designee, who shall determine her/his duties. Loaned Employee will be considered a loaned employee under the workers' compensation law of the State of Idaho.

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

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

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

3. Relationship between ISUF and University.

a. ISUF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits including payroll-related taxes, benefits, and other related payroll costs and the costs associated with travel approved by ISUF. Such costs will be billed quarterly and paid to the University.

b. 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, ISUF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of one year following the completion of this Agreement.

c. The furnishing of Loaned Employee shall not be considered a professional service of the University. At no time during the performance of this Agreement shall the Loaned Employee receive or act under instructions from the University regarding the work performed on

behalf of ISUF.

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

4. General Terms

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

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

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

To ISUF:

Idaho State University Foundation
President
921 South 8th Ave. Stop 8050
Pocatello, ID 83209-8050

Phone: (208) 282-3470
Fax: (208) 282-4994

To the University:

Idaho State University
Vice President for Advancement
821 South 8th Ave, Stop 8024
Pocatello, ID 83209-8024

Phone: (208) 282-3198
Fax: (208) 282-4487

To the Loaned Employee:

EMPLOYEE NAME

Last address on file with University's Human Resources

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

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

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

IDAHO STATE UNIVERSITY

IDAHO STATE UNIVERSITY
FOUNDATION

James A. Fletcher, Vice President

~~Michael J. Byrne~~ William M. Eames, President

Finance and Administration

Date: _____

Date: _____

Kent Tingey, Vice President
University Advancement

Date: _____

LOANED EMPLOYEE concurrence and commitment:

Date: _____

EXHIBIT "B"

Service Agreement

EXHIBIT “B”

SERVICES AGREEMENT

IDAHO STATE UNIVERSITY– IDAHO STATE UNIVERSITY FOUNDATION

THIS SERVICES AGREEMENT is entered into by and between Idaho State University, a state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho (“University”), and IDAHO STATE UNIVERSITY FOUNDATION, a private nonprofit corporation (“ISUF”).

- A. The University agrees to provide to the ISUF the following administrative, financial, accounting, and investment support services.
 - 1. Administrative support for reconciliation between appropriate ISUF and ISU accounts such as scholarship and spendable accounts and appropriate revenue reports between ISUF and ISU, assist with transfer of gift funds to ISU, assist with monitoring gift fund use to ensure compliance with wishes of donor, ISUF policies and applicable laws.
 - 2. Administrative support for ISUF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to ISUF, assist with receipt of distributions from estates and trusts to ISUF.
- B. All University employees who provide support services to the ISUF shall remain University employees under the direction and control of the University.
- C. The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the ISUF, 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 “loaned employees”, the nature and location of which shall be subject to agreement of the parties.
- D. The ISUF will pay directly to the University a reasonable consideration for the services, facilities, equipment, software and operating supplies provided to the ISUF 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 the ISUF 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.

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 30 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 the ISUF dated February 5, 2009. 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.

IDAHO STATE UNIVERSITY

IDAHO STATE UNIVERSITY FOUNDATION

James A. Fletcher, Vice President
Finance and Administration

Michael J. Byrne, President

Date:_____

Date:_____

EXHIBIT "C"

Investment Policy

EXHIBIT “C”

Idaho State University Foundation

Policy V D Investments

INVESTMENT POLICIES OF THE IDAHO STATE UNIVERSITY FOUNDATION

Preamble

It is the policy of the Board to treat all assets of the Idaho State University Foundation, including funds that are legally unrestricted, as if held by the Idaho State University Foundation in a fiduciary capacity for the sake of accomplishing its mission and purposes. The following investment objectives and directions are to be judged and understood in light of that overall sense of stewardship. In that regard, the basic investment standards shall be those of a prudent investor as articulated in applicable state laws.

Investment Assets

For purposes of these policies, investment assets are those assets of the Idaho State University Foundation that are available for investment in the public securities markets as stocks, bonds, cash, or cash equivalents, either directly or through intermediate structures. Illiquid assets are described in the Idaho State University Foundation’s gift acceptance policies, and are governed by those rules and not by these investment policies.

Supervision and Delegation

The Board of the Idaho State University Foundation has adopted these policies and has formed an Investment Committee, described below, to whom it has delegated authority to supervise the Idaho State University Foundation investments. The committee and its counselors will act in accord with this investment policy (hereinafter “policy”), and all applicable laws and state and federal regulations that apply to nonprofit agencies including, but not limited to, the Uniform Prudent Investors Act and the Uniform Management of Institutional Funds Act. The Board reserves to itself the exclusive right to amend or revise these policies.

Investment Committee

It shall be the responsibility of the Investment Committee to:

1. Supervise the overall implementation of the Idaho State University Foundation’s investment policies by the Idaho State University Foundation’s executive staff and outside advisors;
2. Monitor and evaluate the investment performance of the Idaho State University Foundation’s funds;
3. Report at each regularly scheduled meeting of the Board on Foundation investment matters including financial performance;
4. Develop and annually update an investment policy, asset allocation strategies, risk-based fund objectives, and appropriate investment management structures and provide the same to the Board;
5. Execute such other duties as may be delegated by the Board.

Whenever these policies assign specific tasks to the committee, the policies assume that the actual work will (or may) be performed by the Idaho State University Foundation's Finance Director or other designated staff members, subject only to the committee's overall supervision.

Investment Consultant, Advisors, and Agents

The committee is specifically authorized to retain one or more investment advisors (advisors) as well as any administrators, custodians, or other investment service providers required for the proper management of the Idaho State University Foundation's funds. The committee may utilize an advisor as an investment consultant (consultant) to advise and assist the committee in the discharge of its duties and responsibilities. In that regard, a consultant may help the committee to

1. Develop and maintain investment policy, asset allocation strategies, risk-based fund objectives, and appropriate investment management structures;
2. Select, monitor, and evaluate investment advisors and/or investment entities;
3. Provide and/or review quarterly performance measurement reports and assist the committee in interpreting the results;
4. Review portfolios and recommend actions, as needed, to maintain proper asset allocations and investment strategies for the objectives of each fund; and,
5. Execute such other duties as may be mutually agreed.

In discharging this authority, the committee can act in the place and stead of the board and may receive reports from, pay compensation to, enter into agreements with, and delegate discretionary investment authority to such advisors. When delegating discretionary investment authority to one or more advisors, the committee will establish and follow appropriate procedures for selecting such advisors and for conveying to each the scope of their authority, the organization's expectations, and the requirement of full compliance with these policies.

Objectives

The Idaho State University Foundation's primary investment objective is to preserve and protect its assets by earning a total return for each category of assets (a "fund"), which is appropriate for each fund's time horizon, distribution requirements, and risk tolerance.

Tax-Based Restrictions

The Idaho State University Foundation is a charitable organization under § 501(c)(3) of the Internal Revenue Code. Consequently, its income is generally exempt from federal and state income tax with the exception of income that constitutes unrelated business taxable income (UBTI). The committee is to determine if a particular strategy or investment will generate UBTI, for which it may rely on advice of counsel. Since UBTI can be generated by leveraged investments (resulting in "debt-financed income"), the Idaho State University Foundation will not utilize margin, short selling, or other leveraged investment strategies unless the Investment Committee grants a specific exception. When granting exceptions, the committee must determine that the potential rewards outweigh the incremental risks and costs of UBTI. All such exceptions shall be made in writing and shall be communicated to the Board as part of the next regular Investment Committee report.

Reporting Requirements

1. *Monthly* — The committee will obtain written monthly custodial statements. Such statements should contain all pertinent transaction details for each account that holds all or a portion of any the Idaho State University Foundation investment funds. Each monthly statement should include
 - The name and quantity of each security purchased or sold, with the price and transaction date; and,
 - A description of each security holding as of month-end, including its percentage of the total portfolio, purchase date, quantity, average cost basis, current market value, unrealized gain or loss, and indicated annual income (yield) at market.

In addition, if not included in the custodial reports, the consultant and/or the investment advisor(s) should provide a report for each fund or portfolio showing the month-end allocation of assets between equities, fixed-income securities, and cash. The monthly review of custodial statements may be delegated to the Idaho State University Foundation accounting staff.

2. *Quarterly* — The committee should obtain from its investment consultant and/or investment advisors, a detailed review of the Idaho State University Foundation's investment performance for the preceding quarter and for longer trailing periods as appropriate. Such reports should be provided as to each fund and as to the Idaho State University Foundation investment assets in the aggregate. As to each fund, the committee should establish with its investment consultant and/or investment advisors the specific criteria for monitoring each fund's performance including the index or blend of indices that are appropriate for the objectives of each fund and for the investment style or asset class of each portfolio within a fund. The committee shall meet with the consultant to conduct such reviews to the extent it deems necessary.
3. *Periodically* — The committee should meet with its investment consultant at least annually to review all aspects of the Idaho State University Foundation's investment assets. Such a review should include 1) strategic asset allocation, 2) manager and investment entity performance, 3) anticipated additions to or withdrawals from funds, 4) future investment strategies, and 5) any other matters of interest to the committee.

Date of Board Approval:

Person responsible for the periodic review of policy and if necessary submits proposed revisions to Board for approval: Chair Investment Committee Chair

Date of Last Review

EXHIBIT "D"

Articles of Incorporation

EXHIBIT D

ARTICLES OF INCORPORATION

OF

IDAHO STATE UNIVERSITY FOUNDATION, INC.

BE IT KNOWN That We, the undersigned, being natural persons of full age and citizens of the United States, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the general corporation laws of the State of Idaho, and in particular Chapter 11 of Title 30, and the Acts amendatory thereof and supplemental thereto, do hereby associate ourselves, together with such other persons as may associate themselves and their successors, for the purpose in incorporation and do hereby certify as follows:

ARTICLE I.

NAME

The name of this corporation is "Idaho State University Foundation, Inc.

ARTICLE II.

PERIOD OF DURATION

This corporation shall have perpetual existence.

ARTICLE III.

PURPOSES

The purposes for which this corporation was formed and now exists are:

1. To solicit and receive contributions, gifts, grants, devises or bequests of real or personal property or both from individuals, foundations, partnerships, associations, governmental bodies or public or private corporations and to maintain, use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, scientific, literary or educational purposes either directly or by contribution to the Idaho State University or other organizations duly authorized to carry on charitable, scientific, literary or educational activities in order to aid and benefit the Idaho State University, provided, however, that no part of such income or principal shall be contributed to any organization whose net earnings or any part thereof enure to the benefit of any private shareholder or individual or any substantial part of the activities of which involve carrying on propaganda or otherwise attempting to influence legislation, or

participating in or intervening in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

2. No part of the net earnings of the corporation shall enure to the benefit of any member, trustee, officer of the corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation in connection with one or more of its purposes) and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporation's assets on dissolution of the corporation.
3. No part of the activities of the corporation shall involve carrying on propaganda or otherwise attempting to influence legislation or participating in or intervening (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.
4. Upon dissolution of the corporation or the winding up of its affairs except by merger with corporation of similar purposes, the assets of the corporation shall be distributed exclusively to the Idaho State University.

ARTICLE IV.

POWERS

Subject to the express limitation that the corporation shall not have or possess any power at any time, the effect of which prevents the corporation from qualifying as an exempt organization under paragraph 501 of the Internal Revenue Code of 1954 as it now exists or as it may be amended hereafter or which prevents any gifts, grant, devise or bequest from qualifying as a charitable contribution for Federal Estate Tax purposes or for Federal Income Tax purposes, the corporation shall have and possess the following powers, any or all of which must be exercised exclusively in the furtherance of the purposes for which the corporation exists:

- (a) To have perpetual succession by its corporate name.
- (b) To sue and be sued, complain and defend, in its corporate name.
- (c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (d) To purchase, take, receive, lease, take by gifts, devise, or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any interest therein wherever situated.

- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (f) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality, or of any instrumentality thereof.
- (g) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (h) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (i) To conduct its affairs, carry on its operations and have offices and exercise the powers granted by the provisions of Chapter 11, Title 30, Idaho Corporation Code, as that act presently exists or as it may be amended in the future, in any state, territory, district or possession of the United States or in any foreign country.
- (j) To elect or appoint any committees and any officers or agents of the corporation as the Board of Directors may determine and to define their duties and fix the compensation to be paid to any officer or agent.
- (k) To make and alter By-Laws not inconsistent with these Articles of Incorporation or with the Laws of the State of Idaho for the administration and regulation of the affairs of the corporation.
- (l) To make donations for the general welfare of the Idaho State University and for charitable, scientific, literary, and educational purposes incident to the operation of the Idaho State University.
- (m) To indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation whether for profit or not for profit against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be otherwise entitled.
- (n) To cease its corporate activities and surrender its corporate franchise, or to merge with similar non-profit corporations.

- (o) To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the corporation is organized and exists.
- (p) To execute trust agreements and accept and administer trust funds relating to the purposes for which the corporation has been organized and exists and not in conflict with the exempt status of the corporation under the Internal Revenue Code.
- (q) To pay the reasonable and necessary expenses for the operation of the corporation out of the principal or income from gifts, grants, devises or bequests made expressly for that purpose or unrestricted as to their use by the donors or unless expressly provided to the contrary by the agreement controlling the use of such funds, from income received from other gifts, grants, devises or bequests during the period said funds are held by the foundation and are not required for the purposes specified by the donor, grantor or testator.
- (r) Unless otherwise specifically restricted by the donor, grantor, or testator, the corporation shall have and possess the following powers with reference to its investments:
 - (1) To receive and accept in kind and to hold and administer as an investment as long as it shall seem to it best, any and all property which may come to it without liability for depreciation or loss through errors of judgment or otherwise.
 - (2) To mingle funds of different gifts for the purpose of investment and reinvestment.
 - (3) To acquire, invest, reinvest, exchange, retain, sell or otherwise dispose of stocks, bonds, or other securities in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence generally exercise in the management of their own affairs, not in regard to speculation but in making investments of their own funds with a view to probable increase of principal as well as safety of their capital and current income. Within the limitations of this standard, the corporation is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment including specifically, but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages and to retain any property properly acquired without limitation as to time and without regard to its suitability for original purchase. The corporation shall not be limited or restricted to authorized investments for trustees under the laws of Idaho or any other law as now existing or as hereafter enacted.
 - (4) To determine whether money or other property received is principal or income, or partly one and partly the other; and to charge and apportion expenses and losses to principal and income as it may deem just and equitable; to make good any "wasting investment," losses of principal or premiums paid for securities, out of income over such periods of time as it may deem advisable.

- (5) To invest and reinvest expendable principal received by the Foundation for specific purposes but not presently required for the purposes specified by the donor, grantor or testator in such investments as the Board of Directors shall determine after taking into account the time when said principal funds will be required and the necessity to preserve said funds without loss of principal and to use or accumulate the net income received therefrom for reasonable expenses or operations of the Foundation, as the Board of Directors shall determine; provided, such expendable principal funds shall be available when required for use for the purposes specified by the donor, grantor or testator.

V.

REGISTERED OFFICE AND AGENT

The official registered office of the corporation shall be in the Administration Building on the Idaho State University Campus, Pocatello, Idaho. The Resident agent of the corporation until otherwise designated by the Board of Directors is Herman J. McDevitt, address: First Security Bank Building, Pocatello, Idaho. The Board of Directors from time to time by appropriate resolution shall have the power and authority to change the location of the registered office of the corporation and to change the designation of the resident agent of the corporation.

VI.

THE BOARD OF DIRECTORS

(1) The affairs of the corporation shall be conducted by a Board of Directors of at least three members. The exact number of Directors shall be fixed from time to time by the By-Laws of the corporation. Until otherwise provided by the By-Laws, and until their successors are elected and qualified the Board of Directors shall consist of the following members: Dee Bogert, Member, State Board of Education; Dr. William E. Davis, President Idaho State University; Dr. Donald F. Kline; Frank D. Seelye; William J. Ryan, Jr., Executive Secretary of Alumni Association; Herman J. McDevitt, Attorney; and Charles H. Kegel. In addition, the President of the Foundation and the Treasurer are ex-officio members of the Board.

(2) The qualifications of members of the Board, their manner of selection and the voting rights of ex-officio members shall be determined by the By-Laws.

(3) The real estate and personal property of the corporation shall be under the complete control of the Board of Directors which is charged with the responsibility of administering and expending said property in accordance with the purposes for which the corporation has been organized and exists and in accordance with the terms and conditions of the gift, grant, devise or bequest under which the corporation has received the property in question. The Board of Directors may appoint an Investment Committee and may also appoint a fiscal agent or agents to handle its investments and financial affairs in such manner as may be determined advisable by the Board.

VII.

ORIGINAL INCORPORATORS

The names and Post Office addresses of the incorporators, who shall serve as Trustees until their successors are elected and qualified are:

Name

Address

Frank W. H. H. H.
Frank D. Seelye

161 16th Place
Pocatello, Idaho
724 So 19th
Pocatello Idaho

William H. Ryan

300 myrl st.

E. A. Rozer

Pocatello, Idaho

James M. M. M.

28 Willowood

Pocatello Idaho

William E. Davis

42 Calgate

Pocatello, Idaho

Thomas J. McDevitt

341 S. 7th

Pocatello, Idaho

VIII.

BOARD OF TRUSTEES

The corporation shall have a Board of Trustees which shall be unlimited in number. Members of the Board shall serve without compensation of any kind. The qualifications and method of selection of trustees shall be determined by the By-Laws. The Board of Trustees shall have the power to adopt amendments to these Articles of Incorporation and shall elect the Directors of the corporation in such manner as shall be provided by the By-Laws.

In addition the holders of the following offices are trustees by virtue of their office: President of the Idaho State University, the Secretary of the Idaho State University Alumni Association, a member of the Board of Trustees of the Idaho State University to be designated by the Board of Trustees and the President of the Idaho State University Alumni Association.

ARTICLE IX.

AMENDMENTS

These Articles of Incorporation may be amended at any time in the manner and form provided by the Idaho Code as existing at the time of the adoption of these Articles of Incorporation or as provided by any other applicable law but no amendment may be adopted which changes or affects in any way the exempt status of the corporation as an organization existing exclusively for charitable, educational, literary or scientific purposes.

CERTIFICATE

IN WITNESS WHEREOF, the undersigned President and Secretary of the corporation hereby certify and state that these Articles of Incorporation were adopted by the incorporators of the Idaho State University Foundation, Inc. at a special meeting of said incorporators held at the Conference Room; Administration Building, on February 9, 1967, that a quorum was present at such meeting and that these Articles received unanimous approval of the incorporators, and members present at said meeting.

That due notice of said meeting and purposes thereof was given by publication in the Idaho State Journal, a legal newspaper as provided by law. That the Directors & Trustees herein named were elected at such meeting pursuant to such notice.

William E Davis
President

Donald F. Kline
Secretary

STATE OF IDAHO)
 : ss
County of Bannock)

On this 13th day of March, 1967, before me the undersigned, a Notary Public in and for Bannock County, Idaho, personally appeared Wm. E. Davis and Donald F. Kline, to me known to be the President and Secretary, respectively, of the Idaho State University Foundation, Inc., and upon being first duly sworn upon oath, deposed and stated that the facts set forth in the foregoing instrument and certificate were in all respects true and correct.

Herman J. McDevitt
Notary Public for Idaho
Residing at Pocatello, Idaho

IDAHO STATE UNIVERSITY

Office of the Director
Development and Institutional Research
POCATELLO, IDAHO
83201

March 13, 1967

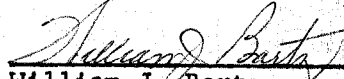
UNIVERSITY FOUNDATION

It was moved by Mr. Smith, seconded by Mr. Hampton, and carried, that the State Board of Education, acting as Trustees for Idaho State University, approve the use of the name "Idaho State University" for the proposed corporation to be known as the Idaho State University Foundation, Inc. In accordance with Section 2, A, of the By-Laws of the Idaho State University Foundation, Inc., the State Board of Education names ~~Edmund A. Bogert, Jr.~~ to serve on the Board of Directors of the Foundation.

Edmund A. Bogert, Jr.

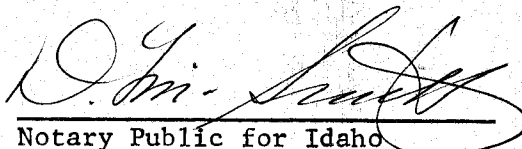
Copies of the Articles of Incorporation and the By-Laws are attached for the information of the Board. (Appendix B)

This is to certify that the foregoing is an exact and true excerpt taken from the minutes of the State Board of Education acting as trustees for Idaho State University in a duly called meeting in Moscow, Idaho, March 2-3, 1967.


William J. Bartz
Financial Vice President

STATE OF IDAHO)
 : ss
County of Bannock)

On this 13th day of March, 1967, before me the undersigned, a Notary Public in and for Bannock County, Idaho, personally appeared Mr. William J. Bartz to me known to be the Financial Vice President of Idaho State University and upon being first duly sworn upon oath, deposed and stated that the facts set forth in the foregoing instrument were in all respects true and correct.


Notary Public for Idaho
Residing at Pocatello, Idaho.

No. 38255

**Articles of Incorporation
of**

IDAHO STATE UNIVERSITY FOUNDATION, INC.

Place of business Pocatello

Existence Perpetual

Capital Stock NONE

STATE OF IDAHO

Department of State

Boise, Idaho

**Approved, filed and admitted to the
records of Articles of Incorporation
of the State of Idaho and certificate
issued this** 17th

day of March 1967

at 10:00 **o'clock** A. M.

FEES PAID

Filing \$ 15.00

Recording 5.20

~~**Cert. Copy**~~

Certificate

~~**License Tax**~~

TOTAL \$ 20.20

EDSON H. DEAL

SECRETARY OF STATE

BY Rayola Black
Ass't. CORPORATION CLERK

State of Idaho

Department of State.

CERTIFICATE OF AMENDMENT OF

IDAHO STATE UNIVERSITY FOUNDATION, INC.

IDAHO STATE UNIVERSITY FOUNDATION, INC.

May 13

83

MAY 13 8 35 AM '83
SECRETARY OF STATE

MAY 5 8 52 AM '83
SECRETARY OF STATE

AMENDMENT OF ARTICLES OF INCORPORATION OF
IDAHO STATE UNIVERSITY FOUNDATION, INC.

Harry F. Magnuson, President, and Dennis Holter,
Executive Vice President/^{Secretary} of the above-named corporation,
respectfully show that:

The above-named corporation was organized under the laws of the State of Idaho and was issued a charter by the Secretary of State dated February 9, 1967, with its principal place of business in Pocatello, Bannock County, Idaho.

The undersigned, the duly elected and qualified President and Executive Vice President/^{Secretary} of the said corporation, hereby certify that statutory notice was given to each Director of the said corporation of a special meeting of Directors to be held on April 22, 1983, and notice stated the time and place of meeting and the purposes thereof.

And, further, that the meeting was duly held pursuant to notice, and a resolution was offered and unanimously adopted by vote of said Directors/^{members} to amend Articles V and VIII of the Articles of Incorporation of said corporation to read as follows:

"V.

REGISTERED OFFICE AND AGENT

The official registered office of the corporation shall be in the Administration Building on the Idaho State University Campus, Pocatello, Idaho. The resident agent of the corporation until otherwise designated by the Board of Directors is *Dennis A. Holter*, address: Campus Box 8050, Idaho State University, Pocatello, Idaho. The Board of Directors from time to time by appropriate resolution shall have the power and authority to change the location of the registered office of the corporation and to change the designation of the resident agent of the corporation."

"VIII.

BOARD OF TRUSTEES

The corporation may have a Board of Trustees which shall be unlimited in number. Members of the Board of Trustees shall serve without compensation and without requirements for duties or responsibilities. The qualifications and method of selection of Trustees shall be determined by the By-Laws."

And, further, your petitioners certify that they have complied in all respects with the laws of the State of Idaho and amendments thereto to amend the Articles of Incorporation of the Idaho State University Foundation, Inc.

WHEREFORE, we pray that the said Articles of Incorporation of the Idaho State University Foundation, Inc. be so amended.

DATED and signed this 22nd day of April, 1983.

IDAHO STATE UNIVERSITY
FOUNDATION, INC.

By: *W. F. Magnuson*
President

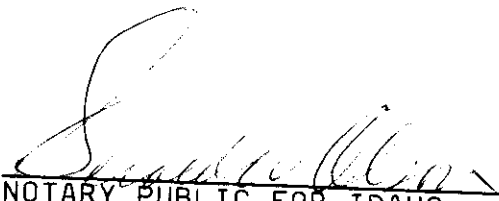
ATTEST:

Rennus A. Holter
Executive Vice President & Secretary

STATE OF IDAHO)
 : ss
County of Bannock)

I, Gerald W. Olson, a Notary Public, do hereby certify that on this 22nd day of April, 1983, personally appeared before Harry F. Magnuson, who, being by me first duly sworn, declared that he is the President of the Idaho State University Foundation, Inc., that he signed the foregoing document as

President of the corporation, and that the statements therein contained are true.

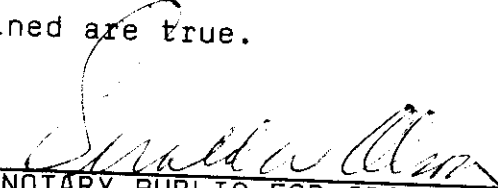

NOTARY PUBLIC FOR IDAHO
Residing at Pocatello, Idaho

(SEAL)

My Commission Expires: Lifetime

STATE OF IDAHO)
 : ss
County of Bannock)

I, Gerald W. Olson, a Notary Public, do hereby certify that on this 22nd day of April, 1983, personally appeared Dennis Holter, who, being by me first duly sworn, declared that he is the Executive Vice President of the Idaho State University Foundation, Inc., that he signed the foregoing document as Executive Vice President of the corporation, and that the statements therein contained are true.


NOTARY PUBLIC FOR IDAHO
Residing at Pocatello, Idaho

(SEAL)

My Commission Expires: Lifetime



ARTICLES OF AMENDMENT (Non-profit)

To the Secretary of State of the State of Idaho
Pursuant to Title 30, Chapter 3, Idaho Code, the undersigned
non-profit corporation amends its articles of incorporation as
follows:

2006 JUN 19 AM 10:04

FILED EFFECTIVE

SECRETARY OF STATE
STATE OF IDAHO

1. The name of the corporation is:
Idaho State University Foundation, Inc.

If the corporation has been administratively dissolved and the corporate name is no longer
available for use, the amendment(s) below must include a change of corporate name.

2. The text of each amendment is as follows:

See attached for Amended and Restated Article III.

3. The date of adoption of the amendment(s) was: June 7, 2006

4. Manner of adoption (check one):

☒ Each amendment consists exclusively of matters which do not require member approval pursuant to
section 30-3-90, Idaho Code, and was, therefore, adopted by the board of directors. (Please fill spaces below)

- a. The number of directors entitled to vote was: 22
- b. The number of directors that voted for each amendment was: 18
- c. The number of directors that voted against each amendment was: 0

☐ The amendment consists of matters other than those described in section 30-3-90, Idaho Code, and was,
therefore adopted by the members. (Please fill spaces below)

- a. The number of members entitled to vote
was: _____

- b. The number of members that voted for each
amendment was: _____

- c. The number of members that voted against
each amendment was: _____

Dated: June 8, 2006

Signature: _____

Typed Name: Kent M. Tingey

Capacity: Executive Vice President

Customer Acct #:

(if using pre-paid account)

Secretary of State use only

g:\corp\corporate\articles of amendment_no.pmd
Revised 10/2003

Web Form

IDAHO SECRETARY OF STATE
06/19/2006 05:00
CK: 4817 CT: 2982 BH: 968836
1 @ 30.00 = 30.00 NON PROF A # 2

C38255

AMENDED AND RESTATED

ARTICLE III

PURPOSES

- A. Said organization is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- B. No part of the net earnings of the organization shall inure to the benefit of, or be distributed to, its members, trustees, officers or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof.
- C. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.
- D. Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by the District Court of the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

EXHIBIT "E"

Amended and Restated Bylaws

EXHIBIT E

Amended and Restated Bylaws
of
Idaho State University Foundation, Inc.

Adopted February 25, 2011

Idaho State University Foundation

Policy I D Bylaws

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Amended and Restated Bylaws of
Idaho State University Foundation, Inc.

AUDIT

Article I Purpose and Duration of the Foundation

The Idaho State University Foundation, Inc., an Idaho nonprofit corporation (the “Foundation”) exists for the purpose of soliciting, securing and managing various sources of funding to promote the growth and operations of Idaho State University in the furtherance of the University’s goals to provide a meaningful and valued educational experience for its students. The Foundation shall have no termination date and shall exist in perpetuity.

Article II Offices

Section 2.01 Principal Office. The principal office of the Foundation shall be located at the administrative building on the Idaho State University Campus. The Foundation may have such other offices as the Board of Directors (the “Board”) may designate or as the business of the Foundation may require from time to time.

Section 2.02 Registered Office. The registered office of the Foundation to be maintained in the state of Idaho shall be located at the principal office of the Foundation, and may be changed from time to time by the Board.

Article III Board of Directors

Section 3.01 General Powers and Standard of Care. All corporate powers shall be exercised by or under authority of, and the business and affairs of the Foundation shall be managed under the direction of, the Board except as may be otherwise provided in the Idaho Nonprofit Corporation Act (the “Act”) or the Articles of Incorporation (the “Articles”). If any such provision is made in the Articles, the powers and duties conferred or imposed upon the Board by the Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the Articles.

A Director shall perform such Director's duties as a Director, including such Director's duties as a member of any committee of the Board upon which such Director may serve, in good faith, in a manner such Director reasonably believes to be in the best interests of the Foundation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such Director's duties, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One (1) or more officers or employees of the Foundation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which such director does not serve, duly designated in accordance with a provision of these Bylaws, as to matters within its designated

authority, which committee the director reasonably believes to merit confidence, but such director shall not be considered to be acting in good faith if such director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall have no liability by reason of being or having been a director of the Foundation.

Section 3.02 Composition and Term. There shall be a Board of Directors of the Foundation consisting of no more than twenty-five (25) voting directors. Directors shall be elected by the Board for a term of three (3) years and shall not serve more than three (3) consecutive terms, unless elected Board Chair (“CoB) President or Vice President (“VP”) of the Foundation. The term of the director elected VP shall be extended an additional one year after the completion of service as CoB and President, unless the maximum of three terms has not been reached, in which case he or she will serve the remainder of his or her three terms. After the maximum of three (3) terms on the Board, an outgoing director shall automatically move into Associate status and may be re-elected to the Board after a term of absence from the Board of at least one (1) year.

Section 3.03 Method of Selection. Nomination to the Board may be made by any member of the Board, any ex officio members of the Board or any Board Associate. Nominations should be submitted in writing to a member of the Nominating Committee of the Board. The Nominating Committee will review the nominees and present a slate of potential nominees to the Board for election when vacancies occur on the Board.

Section 3.04 Qualifications. Any person of good moral character having a genuine interest in the objectives of the Foundation may be qualified as a member of the Board without regard to his or her place of residence, whether he or she has attended Idaho State University or any other similar factor.

Section 3.05 Ex Officio Membership. The following shall be ex officio members of the Board of this Foundation:

- a. The President of Idaho State University;
- b. The Vice President for University Advancement at Idaho State University (“EVP”);
- c. The Secretary of the Foundation;
- d. The Treasurer of the Foundation;
- e. The President of the Idaho State University Alumni Association;
- f. Legal Counsel for the Foundation;

- g. An ISU Faculty Member periodically appointed or elected by the ISU Faculty Senate to perform an active role in fund-raising for the University; and
- h. The President of the Idaho State University Bengal Foundation.

Unless they are also current voting directors, ex officio members of the Board shall not vote on matters being considered by the Board.

Section 3.06 Meetings of the Board of Directors.

The Board shall meet semi-annually and at such other times as meetings may be called. The CoB, President, VP, or the EVP shall have the right to call any meeting of the Board at any time and place by giving no less than five (5) days notice to the Board of the time and place of such meeting.

(b) Any Board action to remove a director shall require no less than seven (7) days written notice to each director that the matter will be voted on at a Board meeting. Such notice shall also include the time and place of such meeting.

(c) A director may, at any time before, during or after a Board meeting, waive any notice required by law, the Articles, or these Bylaws. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Foundation records.

A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with law, the Articles, or these Bylaws objects to lack of notice and does not thereafter vote for or assent to the objected action.

(d) A majority of the voting membership of the Board shall constitute a quorum at any meeting and, unless otherwise provided by law or by the Articles, action of the Board shall be controlled by majority action of the voting directors present at any meeting at which a quorum is present.

(e) The Board shall keep a record of its proceedings and shall make a detailed report available to the directors, the officers, including ex officio officers of the Foundation, and Board Associates.

Section 3.07 Committees of the Board of Directors.

The Foundation Board will have the following standing committees: Executive, Governance, Audit, Finance, Investment, Development and Nominating. The responsibilities of the standing committees are described in Section IX of the Policy Manual.

The Board shall have the right to create any other committee from time to time to assist in accomplishing the duties and the responsibilities of the Foundation. Membership on any

committee need not be limited to members of the Board or Board Associates. Such ad hoc committees are discussed in Section IX. H. of the Policy Manual.

Section 3.08 Vacancies. Any vacancy occurring on the Board and any directorship to be filled by reason of any increase in the number of directors shall be filled by the Board based on nominations received from the Nominating Committee. The term of any directorship arising due to vacancy or increase in the number of directors shall be three (3) years and shall be subject to the term limits described in Section 3.02 above.

Section 3.09 Removal of Directors.

(a) Removal for Cause. Any director may be removed from office for cause by a two-thirds (2/3) majority vote of the total directors then in office.

(b) Removal for Unexcused Absences. A director may be removed from office after two (2) unexcused absences of any Board meeting within any twelve-month period, provided that a majority of the total directors then in office vote for such removal.

Section 3.10 Informal Action. Any action required to be taken at a meeting of the Board of directors may be taken without a meeting if a majority of the directors agree to such action either via electronic mail or in writing.

Section 3.11 Open Meetings. It is the intent of the Foundation to conduct its business in open sessions whenever possible. However, the meeting shall be closed in those circumstances where the Board is discussing or acting upon strategy with respect to litigation; discussing the purchase of real property not owned by a public agency; interviewing prospective Foundation employees; or considering the evaluation, dismissal or disciplining of, or hearing complaints or charges brought against, a Foundation employee or staff member.

On any other matter which the Board feels must be dealt with in a confidential manner, the Board may close its meeting to the non-Board members of the Foundation and the general public. An affirmative two-thirds (2/3) vote of the Board members present is necessary to close the meeting. The Board shall take no final action or make any final decision in closed meeting.

Section 3.12 Director Conflicts of Interest. All members of the Board shall comply with all provisions of the Conflict of Interest Policy as set forth in Section II. D. of the Policy Manual.

Section 3.13 Loans to Directors. The Foundation shall not lend money to or guarantee the obligation of a director.

Article IV Board Associates

The Foundation shall have honorary Associates to provide advisory services to the Foundation. The Associates are individuals who have previously served on the Board for the Foundation. Directors who have completed three (3) terms on the Board will automatically be eligible to

serve as an Associate, unless they decline to do so. Associates shall be unlimited in number and shall serve until resignation or until removal by a majority vote of the Board. Associates shall be invited to all regular meetings of the Board, though they shall not be required to attend. Associates may not vote on matters being considered by the Board.

Article V Officers

Section 5.01 Designation and Method of Selection. *Officers of the Foundation shall consist of the Board Chair (“CoB”), President, Vice President (“VP”), Executive Vice President (“EVP”), Secretary and Treasurer. Except as otherwise provided herein, the officers shall be elected by the Board and, other than the CoB, President and VP, shall serve at the pleasure of the Board or until their respective successors are duly elected and qualified. The term of the CoB and of the President shall be two years each. The term of the VP shall be one year and shall begin one year before the end of the President’s term. The VP will automatically assume the role of President at the end of the term of the previous President. The President will automatically assume the role of CoB at the end of the term of the previous CoB. Persons elected as Secretary or Treasurer shall be then current members of either the Board or Board Associates. Any vacancies in any office shall be filled by the Board at any regular or special meeting of the Board from nominees provided by the nominating committee. The terms of officers as described herein may be increased or decreased by majority vote of the Board members present at the meeting at which such increase or decrease is voted on, provided a quorum is present.*

Section 5.02 Duties of the Officers.

The duties and responsibilities of the various officers are described in Section III of the Board’s policies.

It is not expected that any officer, other than the EVP, shall devote his or her full time to the affairs of the Foundation or the University unless otherwise directed by the Board at the time of his or her election and with his or her consent.

Section 5.03 Removal. Any officer elected or appointed by the Board may be removed by an affirmative vote of two-thirds (2/3) of the total Board whenever, in its judgment, the best interest of the Foundation would be served thereby.

Section 5.04 Officer Conflict of Interest. All officers shall comply with all provisions of the Conflict of Interest Policy as set forth in Section II. D. of the Board’s policies.

Section 5.05 Loans to Officers. The Foundation shall not lend money to or guarantee the obligation of an officer.

Article VI Miscellaneous

Section 6.01 Indemnification. The Foundation shall indemnify any director, officer or former

director or officer of the Foundation against expenses actually and reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he or she is made a party by reason of being or having been a director or officer, except in relation to matters as to which he or she is adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty to the Foundation.

Section 6.02 Investment. Any funds of the Foundation which are not needed currently for the activities of the Foundation may, at the discretion of the Board, be invested in such investments as are permitted by law.

Section 6.03 Depositories. All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, savings and loan associations, trust companies, or other depositories as the Board may elect.

Section 6.04 Contracts. The Board may authorize any officer(s) or agent(s) of the Foundation, in addition to the officers authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances.

Section 6.05 Checks, Drafts, Etc. All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Foundation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instrument shall be signed by the Treasurer

Section 6.06 Fiscal Year. The fiscal year of the Foundation shall end on the last day of June of each year.

Section 6.07 Books and Records. The Foundation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board, and committees having any of the authority of the Board, and shall keep a record giving the name and address of the members entitled to vote. All books and records of the Foundation may be inspected by any member or his agent or attorney or the general public for any proper purpose at any reasonable time.

Section 6.08 Nondiscrimination. This Foundation is an equal opportunity employer and shall make available its services without regard to race, creed, age, sex, color, ancestry, or national origin.

Section 6.09 Political Activity. The Foundation shall not, in any way, use corporate funds in the furtherance of, nor engage in, any political activity for or against any candidate for public office. However, this Bylaw shall not be construed to limit the right of any official or member of this Foundation to appear before any legislative committee, to testify as to matters involving the Foundation.

Section 6.10 Gifts. The Board may accept, on behalf of the Foundation, any contribution, gift,

bequest, or devise for the general purposes or for any special purposes of the Foundation.

Section 6.11 Parliamentary Procedure. All meetings of the Board and membership shall be governed by *Roberts' Rules of Order* (Current Edition), unless contrary procedure is established by the Articles or these Bylaws, or by resolution of the Board.

Section 6.12 Staff Conflict of Interest. All staff members shall comply with all provisions of the Conflict of Interest Policy as set forth in Section II.D. of the Policy Manual.

Article VII Amendments

These Bylaws may be amended by an affirmative vote of a majority of the voting directors present at any regular meeting of the Board or at a special meeting called for the specific purpose of amending such Bylaws. Notice of any proposed amendment shall be mailed by United States mail or by electronic mail to each director and to each person entitled to notice of Board meetings at his or her last known address not less than ten (10) days preceding the meeting at which such amendment will be submitted to a vote. This meeting may be conducted in person, by telephone, or by electronic mail. A quorum of the Board must participate.

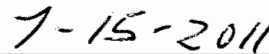
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SECRETARY'S CERTIFICATION

This is to certify that the foregoing Bylaws of the Idaho State University Foundation have been duly adopted by the Board of Directors at a meeting held on February 25, 2011.

A handwritten signature in cursive script, reading "Douglas B. Atkinson", written over a horizontal line.

Secretary

A handwritten date "7-15-2011" written over a horizontal line.

Date

EXHIBIT "F"

Conflict of Interest Policy

Idaho State University Foundation

Policy II D Conflict of Interest Policy

1. Purpose

The purpose of the conflict of interest policy is to protect the Foundation's interest when it is contemplating entering into a contract, transaction, or arrangement that might benefit the private interest of an officer or director of the Foundation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

2. Definitions

- a. Interested Person. Any director, officer, member of a committee with Board delegated powers, or staff member who has a direct or indirect financial interest, as defined below, is an interested person.
- b. Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business or investment, or a member of the person's family has:
 - i. A position as an officer, director, trustee, partner, employee, or agent of any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
 - ii. An ownership or investment interest in any entity with which the Foundation has or is considering a contract, transaction, or arrangement;
 - iii. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has or is considering a contract, transaction, or arrangement;
 - iv. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is considering or negotiating a contract, transaction, or arrangement; or
 - v. Any other direct or indirect dealings with any entity from which he or she knowingly benefitted (e.g., through receipt directly or indirectly of cash or other property in excess of \$500 a year exclusive of dividends or interest) and with which the Foundation has, is considering, or is negotiating a contract, transaction, or arrangement.
- c. The term "a member of the person's family" means the person's spouse, parent, step-parent, guardian, brother, sister, step-brother, step-sister, mother-in-law,

father-in-law, child, stepchild, grandmother, grandfather, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, first cousin, or grandchild.

- d. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- e. A financial interest is not necessarily a conflict of interest. Under Section 6.03 Paragraph (b) below, a person who has a financial interest may have a conflict of interest only if the appropriate Board or Committee decides that a conflict of interest exists.

3. Procedures

- a. Duty to Disclose. At the first knowledge of the possibility, creation, or existence of a financial interest as described above, the interested person must disclose to the Board the existence of the financial interest and any and all relevant and material facts known to the interested person about the proposed or existing contract, transaction, or arrangement that might reasonably be construed to be adverse to the Foundation's interest. The interested person must be given the opportunity to disclose all other material facts to the directors and members of committees with Board delegated powers considering the proposed contract, transaction, or arrangement.
- b. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or Committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or Committee members shall decide if a conflict of interest exists.
- c. Procedures for Addressing the Conflict of Interest.
 - i. An interested person may make a presentation at the Board or Committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the contract, transaction, or arrangement involving the possible conflict of interest.
 - ii. The Chairperson of the Board or Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed contract, transaction, or arrangement.
 - iii. After exercising due diligence, the Board or Committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous contract, transaction, or arrangement from a person or entity that would not give rise to a conflict of interest.
 - iv. If a more advantageous contract, transaction, or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or Committee shall determine by a majority vote of the

disinterested directors whether the contract, transaction, or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the contract, transaction, or arrangement.

- v. Such contract, transaction, or arrangement shall only be authorized, approved, or ratified upon the affirmative vote of a majority of the directors of the Board then in office, or a majority of the Committee members, who are not interested persons as described above.

4. Violations of the Conflicts of Interest Policy

- a. If the Board or Committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or Committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

5. Records of Proceedings

The minutes of the Board and all Committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the contract, transaction, or arrangement, the content of the discussion, including any alternatives to the proposed contract, transaction, or arrangement, and a record of any votes taken in connection with the proceedings.

6. Compensation

- a. A voting member of the Board who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

- c. No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

7. Annual Statements

Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

8. Periodic Reviews

To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

9. Use of Outside Experts

When conducting the periodic reviews as provided for in Section 6.08, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

10. Foundation Conflicts

The Foundation acting through its officers and directors will make a good faith attempt to avoid conflicts of interest between the Foundation and Idaho State University and its Board, and will not, without approval of the Board of the Foundation, borrow funds from, or otherwise obligate Idaho State University.

11. Material Gifts

No director, trustee, officer, or staff member of the 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 shall an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

Date of Board Approval: October 17, 2008

Person responsible for the periodic review of policy and submitting proposed revisions to the Board for approval: Board Chair

Date of Last Review

EXHIBIT "G"

Code of Ethics and Conduct

Idaho State University Foundation

Policy II C Code of Ethical Conduct

1. Personal and Professional Integrity

All staff (when used in this code, employees or staff members include staff either employed directly by the Foundation or on behalf of the Foundation by the University), board members, and volunteers of the Idaho State University Foundation act with honesty, integrity, and openness in all their dealings as representatives of the organization. The organization promotes a working environment that values respect, fairness, and integrity.

2. Mission

The Idaho State University Foundation has a clearly stated mission and purpose, approved by the board, in pursuit of the public good. All of its programs support that mission and all who work for or on behalf of the organization understand and are loyal to that mission and purpose.

3. Governance

The Idaho State University Foundation has an active governing body, the Board, which is responsible for setting the mission and strategic direction of the organization and oversight of the finances, operations, and policies of the Idaho State University Foundation. The Board

- a. Ensures that its members have the requisite skills and experience to carry out their duties and that all members understand and fulfill their governance duties acting for the benefit of the Idaho State University Foundation and its public purpose
- b. Has a conflict-of-interest policy that ensures that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal, or other means
- c. Has a statement of personal commitment that provides attestation to the commitment to the Idaho State University Foundation's goals and values
- d. Ensures that the chief executive and appropriate staff provide the Board with timely and comprehensive information so that the Board can effectively carry out its duties
- e. Ensures that the Idaho State University Foundation conducts all transactions and dealings with integrity and honesty

- f. Ensures that the Idaho State University Foundation promotes working relationships with Board Members, staff, volunteers, and program beneficiaries that are based on mutual respect, fairness, and openness
- g. Ensures that the organization is fair and inclusive in its hiring and promotion policies and practices for all board, staff, and volunteer positions
- h. Ensures that policies of the Idaho State University Foundation are in writing, clearly articulated, and officially adopted
- i. Has an Audit Committee that is responsible for engaging independent auditors to perform an annual audit of the Idaho State University Foundation's financial statements. The audit committee also is responsible for overseeing the reliability of financial reporting, including the effectiveness of internal control over financial reporting, reviewing, and discussing the annual audited financial statements to determine whether they are complete and consistent with operational and other information known to the committee members, understanding significant risks and exposures and management's response to minimize the risks, and understanding the audit scope and approving audit and non-audit services
- j. Ensures that the resources of the Idaho State University Foundation are responsibly and prudently managed
- k. Ensures that the Idaho State University Foundation has the capacity to carry out its programs effectively

4. Responsible Stewardship

The Idaho State University Foundation manages its funds responsibly and prudently. This should include the following considerations:

- a. Spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional management
- b. Intends that all who are entitled to receive compensation for the organization are, reasonably, fairly and appropriately compensated
- c. Knows that solicitation of funds has reasonable fundraising costs, recognizing the variety of factors that affect fundraising costs
- d. Does not accumulate operating funds excessively
- e. Draws prudently from endowment funds consistent with donor intent and to support the public purpose of the Idaho State University Foundation
- f. Ensures that all spending practices and policies are fair, reasonable, and appropriate to fulfill the mission of the Idaho State University Foundation

- g. Ensures that all financial reports are factually accurate and complete in all material respects
- h. Ensures compliance with laws and regulations

5. Openness and Disclosure

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

6. Legal Compliance

The Idaho State University Foundation will employ knowledgeable legal counsel that will help ensure that the organization is knowledgeable of, and complies with, laws and regulations.

7. Organizational Effectiveness

The Idaho State University Foundation is committed to improving its organizational effectiveness and develops mechanisms to promote learning from its activities. The Idaho State University Foundation is responsive to changes in its field of soliciting funds from private sources and managing endowments and is responsive to the needs of its constituencies.

8. Inclusiveness and Diversity

The Idaho State University Foundation has a policy of promoting inclusiveness. Its staff, board, and volunteers should reflect diversity in order to enrich its programmatic effectiveness. The Idaho State University Foundation takes meaningful steps to promote inclusiveness in its hiring, retention, promotion, board recruitment, and constituencies served.

9. Fundraising

When the Idaho State University Foundation solicits funds it uses material that is truthful about the organization. The Idaho State University Foundation respects the privacy concerns of individual donors and expends funds consistent with donor intent. The Idaho State University Foundation discloses important and relevant information to potential donors.

In raising funds from public and private sources, the Idaho State University Foundation will respect the rights of donors, as follows:

- a. Donors will be informed of the mission of the Idaho State University Foundation, the way the resources will be used, and the University's capacity to use donations effectively for their intended purpose. Further, they will
 - i. Be informed of the identity of those serving on the Idaho State University Foundation's governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities
 - ii. Have access to the Idaho State University Foundation's most recent financial reports
 - iii. Be assured their gifts will be used for purposes for which they are given to the extent that such gifts are in compliance with University and Foundation policy.
 - iv. Receive appropriate acknowledgment and recognition
 - v. Be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law
 - vi. Be approached in a professional manner
 - vii. Be informed whether those seeking donations are volunteers, employees of Idaho State University or of the Foundation, or hired solicitors
 - viii. Have the opportunity for their names to be deleted from mailing lists that the Idaho State University Foundation may intend to share
 - ix. Be encouraged to ask questions when making a donation and to receive prompt, truthful, and forthright answers.

10. Reporting Responsibility

It is the responsibility of all directors, officers, and employees to comply with the code of ethical conduct and to report violations or suspected violations to the Chair of the Audit Committee or the general counsel of the organization. The person receiving the report will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days, unless the submission of the violation is anonymous. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

Date of Board Approval: October 17, 2008

Person responsible for the periodic review of policy and submitting proposed revisions to the Board for approval: Board Chair

Date of Last Review

AUDIT
APRIL 19, 2012

EASTERN IDAHO TECHNICAL COLLEGE

SUBJECT

Board approval of Eastern Idaho Technical College operating agreement with Eastern Idaho Technical College Foundation

REFERENCE

June 2009	Board approval of Eastern Idaho Technical College operating agreement with Eastern Idaho Technical College Foundation
March 2012	Audit Committee reviewed and recommended Board approval of the revised operating agreement

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The Board approved the initial operating agreement between Eastern Idaho Technical College and the Eastern Idaho Technical College Foundation in June 2009.

IMPACT

Approval of the operating agreement brings the Foundation into compliance with Board policy V.E.

ATTACHMENTS

Attachment 1 – EITC Foundation Operating Agreement

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

Board policy requires the operating agreement must be re-submitted to the Board every three (3) years, or as otherwise requested by the Board, for review and re-approval.

There have been no changes to the document since originally approved by the Board June 2009. The operating agreement addresses the topics outlined in Policy V.E.

Staff recommends approval.

AUDIT
APRIL 19, 2012

BOARD ACTION

I move to approve the Operating Agreement between the Eastern Idaho Technical College Foundation and Eastern Idaho Technical College, as presented.

Motion by _____ Seconded by _____ Carried Yes ___No___



Operating Agreement Between
Eastern Idaho Technical College
and
Eastern Idaho Technical College Foundation
February 2012



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

THIS AGREEMENT, entered into as of this 2 day of March, 2012, is between Eastern Idaho Technical College, herein known as "College" and the Eastern Idaho Technical College Foundation, Inc., herein known as "Foundation".

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

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

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

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

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

WHEREAS, the parties hereby acknowledge that they will at all times conform to and abide

by, the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations policy, § V.E., and that they will submit this Agreement for initial prior State Board of Education ("State Board") approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

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

ARTICLE I Foundation Purposes

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

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

ARTICLE II Foundation Organizational Documents

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

ARTICLE III
College Resources and Services

1. College Employees.

- a. *College/Foundation Liaison:* The College's President shall serve as the College's Liaison to the Foundation.
 - i. The College's President shall be responsible for coordinating the College's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the College to the Foundation.
 - ii. The College President or her/his designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the College to the Foundation's Board of Directors regarding the College's coordination with the Foundation's fundraising efforts.
- b. *Executive Director:* The Executive Director of the Foundation is an employee of the College loaned to the Foundation. All of the Executive Director's services shall be provided directly to the Foundation as follows:
 - i. The Executive Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Executive Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in iv below. The Executive Director shall be subject to the control and direction of the Foundation.
 - ii. The Executive Director shall be an employee of the College and entitled to College benefits to the same extent and on the same terms as other full-time College employees of the same classification as the Executive Director.
 - iii. The College shall be responsible for all costs incurred by the College in connection with the College's employment of the Executive Director including such expenses as salary, payroll taxes, and benefits.
 - iv. The Foundation and the College shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the Executive Director is an employee of the College but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the College with respect to the Executive Director, including the following:
 - 1. The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law; such termination may include election by the Foundation for non-renewal of the Loaned

Employee Agreement.

2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall also result in termination of any obligation of the College to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the College.
 3. Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation Chairman or her/his designee. Further, the Foundation shall have the primary role in hiring a Loaned Employee, subject to applicable State or College requirements.
- c. *Other Loaned Employees.* Other loaned employees providing services pursuant to this Agreement shall also serve pursuant to a Loaned Employee Agreement, Exhibit "A", which shall set forth their particular responsibilities and duties.
 - d. *Other College Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the College and the Foundation determine it is appropriate for one or more additional College employees who function in a key administrative or policy making capacity for the College (including, but not limited to, any College Dean or equivalent position) to serve both the College and the Foundation, then, pursuant to Section V.E.2.c.i.a. of the Board Policy Statement, this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such College employee.
 - e. *Limited Authority of College Employees.* Notwithstanding the foregoing provisions, no College employee who functions in a key administrative or policy making capacity for the College (including, but not limited to, any College Dean or equivalent position) shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.
2. Support Staff Services. The College shall provide administrative, financial, accounting and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "B" ("Service Agreement"). All College employees who provide support services to the Foundation shall remain College employees under the direction and control of the College, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement. The Foundation will pay directly to the College the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement. The portion of such costs shall be determined by the agreement of the Parties.
 3. College Facilities and Equipment. The College shall provide the use of the College's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the College and the Foundation. The terms of

use (including amount of rent) of the College's office space, equipment and associated services shall be as set forth in the Service Agreement, Exhibit "B" hereto.

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

ARTICLE IV

Management and Operation of Foundation

1. Gift Solicitation.

- a. *Authority of College President.* All Foundation gift solicitations shall be subject to the direction and control of the College President.
- b. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the College; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.
- c. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the College.

2. Acceptance of Gifts.

- a. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the College, the Foundation shall obtain the prior written approval of the College, and where required by State Board policy, approval of the State Board. Similarly, the Foundation shall also obtain the prior written approval of the College of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the College.
- b. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the College shall be approved by the State Board before acceptance by the College and the Foundation. In cases where the real property is intended to be used by the College in connection with carrying out its proper functions, the real property may be conveyed directly to the College, in which case the College and not the Foundation shall be responsible for the due diligence obligations for such property.
- c. *Processing of Accepted Gifts.* All gifts received by the College or the

Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office in accordance with the Service Agreement.

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

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

4. Foundation Expenditures and Financial Transactions.

- a. *Signature Authority.* The Foundation designates the Foundation Treasurer as the individual with signature authority for the Foundation in all financial transactions. The Foundation may supplement or change this designation with written notice to the College; provided, however, in no event may the person with Foundation signature authority for financial transactions be a College employee nor a "Loaned Employee" as that term is used in this Agreement.
 - b. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

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

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

- a. A donor inadvertently directs a contribution to the College that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the College's transfer of such funds to the Foundation.
 - b. The College has gift funds that were originally transferred to the College from the

Foundation and the College wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.

- c. The institution has raised scholarship funds through an institution activity and the institution wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship nature of the funds.
 - d. Transfers of a *de minimis* amount not to exceed \$10,000 from the institution to the Foundation provided such funds are for investment by the Foundation for scholarship or other general College support purposes. This exception shall not apply to payments by the institution to the Foundation for obligations of the institution to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the College such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis. Further, the Foundation shall make data available to external auditors as necessary to complete audit responsibilities.
8. Insurance. To the extent that the Foundation is not covered by the State of Idaho Retained Risk program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.
9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "C"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the College any updates to such investment policy which updates shall also be attached hereto as Exhibit "C".
10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "D" and the Foundation's Amended and Restated Bylaws which are attached as Exhibit "E." The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to both the College and the State Board.
11. Conflicts of Interest and Ethical Conduct. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set forth as Exhibit "F", and the Foundations Code of Ethical Conduct is set forth as Exhibit "G".

ARTICLE V
Foundation Relationships with the College

1. Access to Records. Subject to recognized legal privileges, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.
2. Record Management.
 - a. The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the College shall be limited to the College's President and any designee of the College's President.
 - b. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.
 - c. Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of College affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337–9-350, except where otherwise required by state and federal law.
3. Name and Marks. Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "Eastern Idaho Technical College" and "Eastern Idaho Technical College Foundation" in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.
4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.
5. Establishing the Foundation's Annual Budget. The Foundation shall provide the

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

6. Attendance of College's President at Foundation's Board of Director Meetings. The College's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.
7. Supplemental Compensation of College Employees. Any supplemental compensation of College employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits must be paid by the Foundation to the College, and the College shall then pay compensation to the employee in accordance with the College's normal practice. No College employee shall receive any payments or other benefits directly from the Foundation.

ARTICLE VI

Audits and Reporting Requirements

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

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

ARTICLE VII

Conflict of Interest and Code of Ethics and Conduct

1. Conflicts of Interest and Code of Ethics and Conduct Policy Statement. The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is set as Exhibit "E", and its Code of Ethical Conduct is set forth as Exhibit "F".
2. Dual Representation. Under no circumstances may a College employee represent both the College and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the College and the Foundation. This shall not prohibit College employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.
3. Contractual Obligation of College. The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the College without first obtaining the prior written approval of the College and, if applicable under law or policy, the State Board of Education. College approval of any such contract shall comply with policies of the State Board of Education with respect to approval of

College contracts.

4. Acquisition or Development of Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the College's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the College shall notify the State Board and where appropriate, the Idaho Legislature, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the College's use shall be a coordinated effort of the College and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII

General Terms

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

5. Providing Document to and Obtaining Approval from the College. Unless otherwise indicated herein, any time documents are to be provided to the College or any time the College's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the College's President or an individual to whom such authority has been properly delegated by the College's President.
6. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.
7. Notices. Any notices required under this agreement may be mailed or delivered as follows:

To The College:

Steven K. Albiston, President
Eastern Idaho Technical College
1600 S. 25th E.
Idaho Falls, ID 83404

To The Foundation:

Michelle P. Ziel, Executive Director
Eastern Idaho Technical College Foundation, Inc.
1600 S. 25th E.
Idaho Falls, ID 83404

8. No Joint Venture. At all times and for all purposes of this Memorandum of Understanding, the College and the Foundation shall act in an independent capacity and not as an agent or representative of the other party.
9. Liability. The College and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.
10. Indemnification. The College and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the College's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.
11. Dispute Resolution. The parties agree that in the event of any dispute arising from this MOU, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, the dispute will be referred to the Chair of the Foundation and the College President. If the Foundation and College President cannot resolve the dispute, then the dispute will be referred to the Foundation Chair and the State Board of Education for

resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this MOU. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

12. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and/or Articles of Incorporation, should the Foundation cease to exist or cease to qualify as an Internal Revenue Code §501(c)(3) organization, the Foundation will transfer its assets and property to the College, to a reincorporated successor Foundation organized to benefit the College, or to the State of Idaho for public purposes, in accordance with Idaho law.
13. Assignment. This Agreement is not assignable by either party, in whole or in part.
14. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
15. Severability. If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.
16. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

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

Eastern Idaho Technical College

By: 

Its: President

Eastern Idaho Technical College Foundation, Inc. By: 

Its: Chairman

Exhibit A

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

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

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

BACKGROUND

The Foundation, incorporated as a 501(c) (3) organization in 1992, raises and manages private funds for the benefit of the College, and The College has agreed to loan its employee, Michelle P. Ziel ("Loaned Employee"), to the Foundation to act in the capacity of Executive Director for the Foundation.

AGREEMENT

The parties agree as follows:

1. Relationship between Loaned Employee and the College.

- a. Loaned Employee may be an exempt, fiscal year employee of the College subject to all applicable policies and procedures of the Board and the College, or a classified employee subject to the applicable State of Idaho, State Board and/or College rules and procedures.
- b. Loaned Employee will be paid at a fiscal year salary rate of \$60,000 payable on the regular bi-weekly paydays of the College. Loaned Employee will be entitled to College benefits to the same extent and on the same terms as other full-time College employees of her/his classification.
- c. The College shall be responsible for the payment of all salary and benefits to Loaned Employee. The College shall be responsible for all payroll-related taxes, benefits costs, and other related payroll costs arising out of the Loaned Employee's employment with the College.

2. Relationship between the Foundation and Loaned Employee.

- a. Loaned Employee will work full time and shall be under the exclusive supervision, direction and control of the Foundation Board of Directors during the performance of her/his duties under this Agreement. Loaned Employee will report directly to the Foundation Chairman or her/his designee, who shall

determine her/his duties. Loaned Employee will be considered a loaned employee under the workers' compensation law of the State of Idaho.

- b. The Foundation is solely responsible for payment of income, social security, and other employment taxes, if any, due to the proper taxing authorities arising from its payment of reimbursements to Loaned Employee. The Foundation agrees to indemnify, defend, and hold the College harmless from any and all liabilities, losses, claims or judgments relating to the payment of these taxes.
- c. No later than ninety (90) days prior to the end of the term of this Agreement, and each subsequent term, if any, The Foundation will evaluate the performance of Loaned Employee. In the case where the Loaned Employee is a classified employee, such evaluation shall occur in accordance with rules and procedures applicable to such employees. The Foundation will provide a copy of the evaluation document to the College no later than fourteen (14) days after the evaluation is completed.
- d. The Foundation may terminate or non-renew Loaned Employee's employment contract, or discipline Loaned Employee in accordance with the Foundation's procedures and applicable law, any such termination or non-renewal shall constitute grounds for termination, non-renewal or discipline of Loaned Employee by the College. Provided however, particularly when the Loaned Employee is a classified employee, any contemplated termination shall be subject to applicable legal and procedural requirements of the State of Idaho and the College.

3. Relationship between the Foundation and the College.

- a. The College will pay one hundred percent (100%) of the total cost of Loaned Employee's salary and benefits. The Foundation will reimburse the College for costs associated with Loaned Employee's travel approved by the Foundation. Such costs will be billed regularly and paid to the College.
- b. The College shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, the Foundation shall have the right to inspect and copy said books and records, which the College agrees to retain for a minimum period of one year following the completion of this Agreement.
- c. The furnishing of Loaned Employee shall not be considered a professional service of the College. At no time during the performance of this Agreement shall the Loaned Employee receive or act under instructions from the College regarding the work performed on behalf of the Foundation.
- d. The College shall have no liability to the Foundation for loss or damage growing out of or resulting from the activities of the Loaned Employee. The Foundation therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, the College, its governing board, officers, employees, and agents, and the Loaned Employee from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, including but not limited to injuries (including death) to persons and for damages to property (including damage to property of the Foundation or others) arising out of or in connection with the

activities of the Loaned Employee under this Agreement. The limitation on liability and any agreement to defend, indemnify, or hold harmless expressed in the Agreement shall apply even in the event of the fault or negligence of the Loaned Employee.

4. General Terms.

- a. **Term, Termination.** This Agreement will terminate on the same day as Loaned Employee's contract as an exempt employee of the College terminates, or in the case of classified employees, after applicable rules and procedures have been followed, or upon Employee's resignation or other separation from employment, whichever is earlier. By mutual written consent, in conjunction with any renewal of the Loaned Employee's contract as an exempt employee of the College, the parties may extend the term of this Agreement for a term equal to the term of the exempt Loaned Employee's renewed contract with the College, or in the case of a classified employee, continued into the next ensuing fiscal year, such that the term of this Agreement shall always be equal to the term of Loaned Employee's status as an exempt or classified employee of the College. The Loaned Employee remains subject to all applicable Board and College policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline for adequate cause, and where applicable, rules and procedures pertaining to classified employees.
- b. **Governing Law.** This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Bonneville County.
- c. **Notice.** Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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

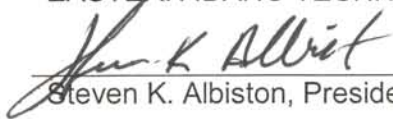
To the College:
Eastern Idaho Technical College
President
1600 S. 25th E.
Idaho Falls, ID 83404
Phone: (208) 524-3000
Fax: (208) 524-0429

To the Loaned Employee:
Michelle P. Ziel
1600 S. 25th E.
Idaho Falls, ID 83404
Phone: (208) 524-0464
Fax: (208)524-0429

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

- d. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- e. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

EASTERN IDAHO TECHNICAL COLLEGE



Steven K. Albiston, President

Date: _____

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION



Chairman

Date: _____

LOANED EMPLOYEE concurrence and commitment:



Date: _____

Exhibit B

SERVICES AGREEMENT

EASTERN IDAHO TECHNICAL COLLEGE

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

SERVICES AGREEMENT

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

THIS SERVICES AGREEMENT is entered into by and between Eastern Idaho Technical College, a state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("College") and Eastern Idaho Technical College Foundation, Inc., a private nonprofit corporation ("Foundation").

A. The College agrees to provide to the Foundation the following administrative, financial, accounting and investment support services.

1. Administrative support for reconciliation between appropriate Foundation and College accounts such as scholarship and spendable accounts and appropriate revenue reports between the Foundation and the College, assist with the transfer of gift funds to the College, assist with monitoring gift fund use to ensure compliance with wishes of donors, Foundation policies and applicable laws.

2. Administrative support for Foundation gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to the Foundation, assist with receipt of distributions from estates and trusts to the Foundation.

B. All College employees who provide support services to the Foundation shall remain College employees under the direction and control of the College.

C. The College will supply the facilities, equipment, software and operating supplies necessary for the College employees supplying the above support services to the Foundation, the nature and location of which shall be at the College's discretion. In addition, the College shall furnish office space and office equipment for use by the "loaned employees," the nature and location of which shall be subject to the agreement of the parties.

D. The Foundation will reimburse directly to the College amounts for the operating supplies provided to the Foundation pursuant to the Services Agreement.

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

and the Foundation dated 1/1/2012. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligation for payment or reimbursement which accrued prior to the date of termination.

EASTERN IDAHO TECHNICAL COLLEGE



Dr. Steven K. Albiston, President

Date: _____

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION


Chairperson

Date: _____

Exhibit C

INVESTMENT POLICY

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC

INVESTMENT POLICY

AMENDED AND RESTATED NOVEMBER 2011

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

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

Investment Objectives

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

Authorities and Responsibilities of the Investment Manager(s)

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

Portfolio Guidelines

1. Investments shall be limited to the following:
 - a. Obligations of the United State Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds.
 - b. Obligations issued by or fully guaranteed to principal and interest by the following agencies or instrumentalities of the United States in which a market is

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

made by a primary reporting government securities dealer: Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association, Government National Mortgage Association, or the World Bank.

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

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

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

Equities	45 - 55%
Fixed Income	35 – 45%
Cash & Equivalents	0 - 10%

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

2. Other Restrictions. The investment manager(s) shall not utilize managed assets to:
 - a. Make loans, unless otherwise provided in these investment guidelines.
 - b. Borrow money or pledge or mortgage managed assets.
 - c. Purchase securities on margins or make short sales.
 - d. Purchase restricted securities.
 - e. Write, purchase or sell puts, calls, warrants, or options.
 - f. Hedges or derivatives.

Meetings of the Finance and Investment Committee

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

Performance Evaluation

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

Delegation of Authority,

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

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

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

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

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

Responsibility of the Investment Consultant(s)

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

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

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

Liquidity

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

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

Diversification for Investment Managers

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



Submitted, Chair, EITC Foundation
Finance and Investment Committee



Approved, Chair EITC Foundation

Exhibit D

ARTICLES OF INCORPORATION

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

COPY

ARTICLES OF INCORPORATION
OF

THE EASTERN IDAHO VOCATIONAL TECHNICAL SCHOOL FOUNDATION, INC.

The undersigned, acting as incorporators, in order to form a corporation for the purposes hereinafter stated, pursuant to the Idaho Non-profit Corporation Act, hereby adopt the following Articles of Incorporation for such Corporation.

ARTICLE I

Name

The name of the Corporation is:

The Eastern Idaho Vocational Technical School
Foundation, Inc.

ARTICLE II

Not for Profit

The Corporation is a nonprofit corporation under the Idaho Nonprofit Corporation Act. The Corporation is not formed for pecuniary profit. No part of the income or assets of the Corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except to the extent permissible by law and except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IV hereof.

ARTICLE III

Term

The term of the Corporation is perpetual.

ARTICLE IV

Purpose

The Corporation is organized, and shall be operated exclusively for, the following purposes: to exercise all of the rights and powers conferred by the laws of the State of Idaho upon nonprofit corporations, including without limiting the generality of the foregoing, to acquire by bequest, devise, gift, purchase, lease, charitable trusts, life estates or any other method of transferring any property of any sort or nature, without limitation as to its amount or value, and to hold invest, reinvest, manage, use, apply, employ, sell, expend, disburse, lease, mortgage, convey, option, donate or otherwise dispose of such property and the income, principal and proceeds of such property for the benefit of the Eastern Idaho Vocational Technical School.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provision of any future tax code (hereinafter "Internal Revenue Code"), or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

ARTICLE V

Trusts and Trust Funds

Notwithstanding the provisions of Article IV, to the extent permitted by law, any donor or testator may direct that his gift shall be held in such charitable trusts as may be specifically designated by said donor or testator and in such case his intentions shall be carried out by the Corporation. To the extent permitted by law, Donors or testators may give a principal sum to the Corporation for the benefit of said Corporation, and provide that the income thereof shall be payable to the donor during his life, or that it shall be paid to a beneficiary or beneficiaries named by him for life, or for some other period of time, and that after the termination of the estate or estates so provided, the income or principal shall be distributed as part of the unrestricted income or principal of said corporation in accordance with Article IV or

for such charitable purposes as the donor or testator may specify in accordance with this Article V.

If the directors of the Corporation by the vote of eighty (80) percent of the directors shall at any time declare that the purposes of any gift made pursuant to this Article V have become (1) unnecessary, undesirable, impracticable or impossible of fulfillment, or (2) if any beneficiary to which the income or principal of any gift shall be provided to be paid shall have become nonexistent or shall have ceased its activities, or (3) if for any other reasons the application or applications provided by the said donor or testator shall have become impossible, impracticable, unnecessary or undesirable, the Corporation shall apply such gift to the purposes set forth in Article IV. The determination of the directors that such purposes have become unnecessary, undesirable, impracticable or impossible of fulfillment shall be binding and conclusive upon all persons.

The Corporation may accept appointments by any court of competent jurisdiction as trustee to hold any fund or funds under the terms of these Articles.

ARTICLE VI

Commingling of Funds

In the absence of any provisions expressing the intention of the donor or testator to the contrary, and to the extent

permitted by law, the Corporation shall be authorized to mingle any property given to it under the terms hereof with other property given to it under the terms hereof without obligation to retain any gift as a separate fund, but any donor or testator may direct that his gift be held as a separate fund and may, if he so desires, designate such fund as a Memorial Fund in memoriam of a particular person or event, and in such case the said fund shall be maintained as a separate fund forming a part of the said Corporation, under such name, if any, as may be properly designated therefor. The Corporation shall in any event be authorized to hold as a separate fund any gift which, in the discretion of the Corporation shall require segregation in order to carry out any specific provision expressed by the donor or testator, or which shall require such segregation for any other reason deemed sufficient by the Corporation.

Subject to any written agreement with the donor or testator to the contrary, if any fund, the income of which is directed by the donor or testator to be paid to any donor or other beneficiary, is commingled, the Corporation shall make available to pay to such donor or other beneficiary as income on such fund the average rate of return on such commingled funds.

If at any time after such mingling of funds shall have taken place, it should thereafter for any reason be deemed by the Corporation as desirable or necessary to separate any fund or funds, each fund so separated shall be considered to be that proportion of the value at the date of separation of the principal or income of the combined funds as the value at the date of gift or such fund so separated shall bear to the total value of such combined funds at said last mentioned date plus any subsequent gifts valued as of the date thereof.

ARTICLE VII

Members

This Corporation shall have no members. All powers of the Corporation are vested in the Board of Directors.

ARTICLE VIII

Provisions for the Regulation of Internal Affairs of the Corporation

There are no provisions for regulation of internal affairs of this Corporation.

ARTICLE IX

Street Address of Initial Registered Office and Name of Initial Registered Agent

The street address of the initial registered office of this Corporation is:

1600 Hitt Road
Idaho Falls, Idaho 83401

The name of the initial registered agent at such street address is: John Christofferson

ARTICLE X

The Number of Directors Constituting the Initial
Board of Directors

The number of directors constituting the initial Board of Directors shall be seven (7). The names and addresses of the initial Board of Directors are:

John Christofferson
1295 Tipperary Ct.
Idaho Falls, Idaho 83404

William A. Robertson
1165 Koster
Idaho Falls, Idaho 83401

Robert Smart
4856 Galena
Pocatello, Idaho 83202

Kittie Sieh
439 Tyra Drive
Idaho Falls, Idaho 83404

Marshal Wade
4160 Spartina St.
Idaho Falls, Idaho 83401

Rollie Leeper
399 N. Capital
Idaho Falls, Idaho 83402

Steve Albison
4065 Lance
Idaho Falls, Idaho 83401

ARTICLE XI

Board of Directors

The Board of Directors shall consist of not less than seven (7) nor more than sixteen (16) members. Management of the affairs of the Corporation shall be by the Board of Directors who may delegate to officers and to committees to their own number such of their powers as they see fit. Directors shall be selected by majority vote of the directors serving at the time of the annual meeting for such terms and in such manner as the By-Laws prescribe.

ARTICLE XI

Name and Street Address of Each Incorporator

The name and street address of each incorporator is:

John Christofferson
1295 Tipperary Ct.
Idaho Falls, Idaho 83404

William A. Robertson
1165 Koster
Idaho Falls, Idaho 83401

Robert Smart
4856 Galena
Pocatello, Idaho 83202

ARTICLE XII

Manner of Acting

A majority of the directors of the Corporation in office who are present in person or by proxy shall constitute a quorum, and a majority of any such quorum at a meeting duly

convened shall have the power to act, except as otherwise specifically provided. Action of any kind may be taken, without a meeting, by writing setting forth the action, signed by all of the members.

ARTICLE XIII

Annual Meeting

The annual meeting of the Corporation shall be at such place, within or outside of the State of Idaho, at such time as the President of the Corporation may notice; provided, however, that such annual meeting shall be held no less than eight (8) nor more than sixteen (16) months from the time of the preceding annual meeting and, provided further, that the president or a majority of the Board of Directors may call the annual meeting or any special meeting at any time.

ARTICLE XIV

Officers

Officers shall consist of a president, one (1) or more vice presidents, a secretary and a treasurer. The president and vice presidents shall be directors but the secretary and treasurer need not be directors. Two (2) or more offices may be held by the same person except that the president may not be secretary or treasurer. Officers shall be selected by the Board of Directors at the times, for such terms and in such manner as the By-Laws prescribe.

ARTICLE XV

Dissolution

In the event of the dissolution of this Corporation, or in the event that it should cease to carry out its purposes, no member, director, officer or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the Corporation from any source, after the payment of all debts and obligations of the Corporation, shall vest in the Eastern Idaho Vocational Technical School (a secondary Vocational Technical School fully funded as a state agency of the State of Idaho) for the use and benefit of said school, or, if the school is not in existence, the State of Idaho for use in vocational technical training in the State of Idaho.

Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE XVI

Tax Exemption

It is the intent of the incorporators that this organization shall be incorporated as a tax exempt organization to which deductible gifts may be made pursuant to the terms of

the Internal Revenue Code. To that end, this Corporation shall be subject to all the restrictions and requirements now or hereafter imposed by the United States Internal Revenue Code, any rules and regulations duly and properly promulgated in the application and interpretation of said Code with which compliance is required for qualification as a tax exempt organization. In particular, in any year in which this Corporation is a "private foundation" as that term is defined in the Internal Revenue Code, its income must be distributed at such time and in such manner as not to subject this Corporation to taxes under Section 4942, Internal Revenue Code, or the regulations promulgated thereto, and the Corporation shall not engage in any act or self dealing as defined in Section 4941, Internal Revenue Code, or the regulations promulgated pursuant thereto, and shall not retain any excess business holdings as defined in Section 4942(c), Internal Revenue Code, or the regulations promulgated pursuant thereto, and shall not make any investments in such manner as to subject the Corporation to taxes under Section 4944, Internal Revenue Code, or the regulations promulgated pursuant thereto, and shall not make any taxable expenditures as defined in Section 4945(d), Internal Revenue Code, or the regulations promulgated pursuant thereto.

11 ARTICLES OF INCORPORATION

ARTICLE XVII

Amendments

The Articles of Incorporation or the By-Laws of this Corporation may be altered, amended or newly adopted by vote of two-thirds (2/3) of the then serving directors at any meeting of the directors of the Corporation called for that purpose (solely or in combination with other purposes) by two-thirds of the directors present, in person or by proxy, provided that notice is sent to each director not less than ten (10) days prior to such meeting, and provided that a quorum is present. Such notice shall state in a general way the nature of the proposed change.

ARTICLE XVIII

Notice

Except as otherwise specified, whenever notice is required, it shall be in writing sent prepaid not less than three (3) days before the event if by telegram and not less than six (6) days if by mail, addressed to the last known address. Notice may be waived either before or after a meeting.

DATED this _____ day of _____, 1989.

John Christofferson

William A. Robertson

Robert Smart

INCORPORATORS

6720g/jk

13 ARTICLES OF INCORPORATION

Exhibit E

AMENDED AND RESTATED BYLAWS

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

BYLAWS
EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.
Amended and Restated, November 8, 2011

ARTICLE ONE
NAME

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

ARTICLE TWO
PRINCIPAL OFFICES

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

ARTICLE THREE
PURPOSES

A. To engage in nonprofit activities for the benefit of Eastern Idaho Technical College, including but not limited to, soliciting, receiving, and disbursing gifts, bequests, and devises to promote excellence in education and related activities, to provide scholarships, grants-in-aid, loans, and other financial assistance to students enrolled at Eastern Idaho Technical college and transacting any other business or performing any other activities authorized by Idaho law consistent with section 501(c)(3) of the Internal Revenue Code.

B. To administer any gifts, devises, or like in accordance with the directions of donors, testators, or other benefactors.

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

D. The Foundation shall at all times comply with the intermediate sanction rules and regulations of the Internal Revenue Code in regard to transactions between the Foundation and disqualified persons, as set forth in detail at Article 8.

E. To serve as agent for Eastern Idaho Technical College in the management and investment of property acquired for Eastern Idaho Technical College, as the governing board of the college shall determine to transfer to the Foundation for such management and investment. Nothing in this paragraph is intended to interfere with or usurp the power of the State Board of Education relating to real property of Eastern Idaho Technical College.

F. To determine, by a vote of at least two-thirds of the directors of the Foundation:

1. that the purposes of any grant, gift, donation, or devise have become unnecessary, undesirable, impractical, impossible of fulfillment or
2. that any beneficiary to which the income or principal of any gift is to be paid has become non-existent or has ceased its activities, or
3. that, for any reason, the applications provided by any donor have become impossible, impractical, unnecessary, or undesirable.

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

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

H. To make applications for and obtain patents, patent rights, trademarks and copyrights, for any inventions or publications and to hold them, provided, however that all income from assets of this kind shall be devoted to the scientific, charitable, and educational purposes of the Foundation and none of such income shall accrue to any officer, director, or employee of the Foundation except for payment for services or compensation as an inventor or author of a project.

I. To have and exercise all powers now or hereafter conferred on nonprofit corporations by the laws of the state of Idaho, subject to the provisions of the articles of incorporation and these bylaws duly and regularly adopted, and to the powers reserved to the governing board of the Eastern Idaho Technical College.

J. Notwithstanding any other provisions of the articles of incorporation, the Foundation shall not carry on, other than as an insubstantial part of its activities, any activities not permitted to be carried on;

1. by corporations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law) or

2. by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law).

K. To defend any action filed against the Foundation, or any director carrying out duly authorized and sanctioned activities solely for the benefit of the Foundation, and to initiate and carry on any legal actions necessary for the benefit of the Foundation.

ARTICLE FOUR

RESTRICTIONS ON EARNINGS

No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to its directors, trustees, officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the articles of incorporation. The Foundation shall not substantially engage in disseminating propaganda or otherwise in attempting to influence legislation, nor shall it participate or intervene in (including the publishing or distribution of statements) any

political campaign on behalf of any candidate for public office. Notwithstanding the other provisions of the articles of incorporation or these bylaws, the Foundation shall not engage in any activities forbidden to be carried on:

A. by corporations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law) or

B. by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future law).

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

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

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

ARTICLE FIVE

MEMBERS/DIRECTORS

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

The following persons shall be ex-officio Directors;

A. The President of Eastern Idaho Technical College.

B. A member of the Advisory Council of Eastern Idaho Technical College selected by that Advisory Council.

C. The Executive Director of the Eastern Idaho Technical College Foundation

ARTICLE SIX

VOTING

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

ARTICLE SEVEN

ELECTION OF DIRECTORS

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

ARTICLE EIGHT

CONFLICTS OF INTEREST

A. The Foundation shall at all times comply with the intermediate sanction rules and regulations of the Internal Revenue Code in regard to transactions between the Foundation and disqualified persons. All such transactions shall be for fair consideration, shall be fully disclosed to the Foundation's board of directors. Such transaction shall only be authorized if approved by the Board of Directors, acting with complete and relevant comparable information with regard to the subject matter, and shall be considered and approved without the participation or control over the disqualified person. Complete and accurate minutes shall be kept for all meetings in which such matter is considered.

B. The following principles also apply:

1. A conflict of interest transaction is a transaction with the Foundation in which a director of the Foundation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subparagraph 2 of this paragraph.
2. A transaction in which a director of the Foundation has a conflict of interest may be approved if the material facts of the transaction and the director's interest are disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved or ratified the transaction.

3. For purposes of this section, a director of the Foundation has an indirect interest in a transaction if: (a) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or (b) Another entity of which the director is a director, officer or trustee is a party to the transaction.

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

ARTICLE NINE

TERMS OF OFFICE

A. Active directors shall serve terms of three (3) years. One third of the initial board shall initially be elected for two (2), three (3), or four (4) year terms so as to stagger the expiration of offices. No director may serve more than two full three year terms in succession. After being off the board for a minimum of one (1) year a director may again be eligible for service with the same restrictions. Notwithstanding the foregoing, by a vote of three-fourths of the full Board of Directors, the term of a director may be extended for a specific period of time as determined by the nominating committee. Terms begin in January. If a member is appointed after the January meeting of the previous year, but before the January meeting of the following year, then that time does not count against the three (3) or six (6) year term (two full three year terms in succession). If a Board member is filling the position of another Board member, they should start their own term, not fulfill the term of their predecessor.

B. A Director may be removed for cause, after notice and hearing before the Board of Directors, on the vote of three-fourths of the board present at a regular or special board meeting.

C. Failure to attend at least three consecutive board meetings will constitute the members resignation from the board, unless the Director has been excused by the Chairperson of the Board or his/her designee.

ARTICLE TEN

MEETINGS

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

B. Special meetings of the Board of Directors may be held at any time and place designated by the Chairperson of the Board of Directors of the Foundation.

C. One-half of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors, and all questions shall be determined by a majority vote of the quorum unless provided otherwise in the articles of incorporation, these bylaws, or by resolution of the Board of Directors.

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

ARTICLE ELEVEN OFFICERS

A. The Board of Directors shall elect from its number, a Chairperson of the Board, Vice-Chairperson, Secretary, and Treasurer. The board may elect such assistant officers or other officers it decides necessary to carry out the business of the Foundation. The office of Secretary and Treasurer may be combined and held by one person.

B. The terms of office shall run for one (1) year. Any officer may be elected to consecutive terms in office.

C. The Chairperson of the Board shall be the presiding officer, but in the Chairperson of the Boards absence, the Vice-Chairperson of the Foundation shall act as Chairperson. In the absence of both of the last mentioned officers from any such meeting, the board may appoint any member to act as Chairperson. The Executive Director of the Foundation or designee shall act as secretary of all meetings of the Board of Directors. In the event of the absence of the Executive Director at any such meeting, the presiding officer may appoint any person to act as secretary of the meeting. The Treasurer shall act as the custodian of financial records and the financial officer of the Foundation. The officers shall perform the traditional tasks assigned to those offices and such other duties as may be assigned by the Chairperson of the Board of Directors.

ARTICLE TWELVE EXECUTIVE COMMITTEE

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

1. All current officers of the Foundation, and
2. Two other Directors elected by the Board of Directors at the annual meeting.

B. The following who shall be ex-officio members of the Executive Committee with seat and voice on the committee but no vote:

1. The President of Eastern Idaho Technical College,
2. The Executive Director of the Foundation, and
3. The board member representing the Advisory Council of Eastern Idaho Technical College Advisory Council.

C. The presence of at least one-half of the voting members of the committee shall constitute a quorum. The affirmative vote of a majority of the voting directors of the committee shall be necessary for the adoption of any resolution.

D. The Executive Committee shall meet at the call of the Chairperson of the Board of the Foundation and minutes shall be reported to the next meeting of the Board of Directors for approval.

E. The presence of at least one-half of the members shall constitute a quorum of the committee. The affirmative vote of a majority of the quorum shall be necessary for the adoption of any resolution.

F. The executive committee shall have no authority to alter, amend, or repeal the articles of incorporation or bylaws, or to elect directors.

ARTICLE THIRTEEN

THE FINANCE COMMITTEE

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

1. Chairperson of the Finance Committee, who shall be appointed by the Chairperson of the Board,
2. Current Chairperson of the Board of the Foundation,
3. Immediate Past Chairperson of the Board of Directors of the Foundation,
4. The Secretary-Treasurer of the Foundation,
5. Two (2) Members-at-Large appointed by the Board of Directors of the Foundation,
6. The Executive Director of the Foundation (ex-officio non-voting), and
7. Portfolio Manager (ex-officio non-voting).

B. The Finance Committee shall serve as Investment Advisors. The finance committee will develop an investment policy for a full Board approval, a plan and strategy to meet the objectives and criteria of that policy. The advisors will review and analyze portfolio assets, monitor performance, construct and maintain appropriate asset allocations and report performance to the Board of Directors of the Foundation.

C. The Finance Committee shall solicit and evaluate written proposals for financial services, and subsequently make a recommendation to the Board of Directors for the hiring of financial portfolio manager(s). The Finance Committee shall conduct oversight of the financial portfolio management and keep the Foundation Board of Directors informed.

D. The Finance Committee shall be convened at least quarterly and at the call of the Chairman of the Finance Committee. Minutes shall be kept by the Executive Director, or other designee, and filed in the Foundation minute book. The Finance

Committee shall report such investment activity to the Board of Directors at the next regularly scheduled meeting.

E. The presence of a majority of the voting members shall constitute a quorum of the committee. The affirmative vote of at least three-fourths of the members present shall be necessary for the adoption of any resolution.

ARTICLE FOURTEEN

THE FUND RAISING COMMITTEE

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

ARTICLE FIFTEEN

MARKETING AND PUBLIC RELATIONS COMMITTEE

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

ARTICLE SIXTEEN

OTHER STANDING COMMITTEES

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

ARTICLE SEVENTEEN

NOMINATING COMMITTEE

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

ARTICLE EIGHTEEN

AMENDMENT

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

the bylaws is the subject of the notice of the meeting.

ARTICLE NINETEEN
FISCAL YEAR

The Foundation's fiscal year shall end June 30.

Adopted by the Board of Directors on November 8, 2011.

Exhibit F

CONFLICT OF INTEREST POLICY

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

**EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.
CONFLICT OF INTEREST POLICY
AMENDED AND RESTATED FEBRUARY 2012**

Article I

Purpose

The purpose of the conflict of interest policy is to protect the Eastern Idaho Technical College Foundation's, herein known as "Organization," a nonprofit 501 (c) (3) incorporated in the State of Idaho, interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**Article II
Definitions**

1. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

**Article III
Procedures**

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonable or possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV **Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, and any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V Compensation

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article VI Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Article VII Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article VIII
Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Exhibit G

CODE OF CONDUCT POLICY

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION, INC.

EASTERN IDAHO TECHNICAL COLLEGE FOUNDATION CODE OF CONDUCT POLICY

Article I

PURPOSE

The Board of Directors of the Eastern Idaho Technical College Foundation, herein known as the "Organization," a supervisory board to raise and manage private resources supporting the mission and priorities of the Eastern Idaho Technical College, herein known as "College," hereby revises its Code of Ethical Conduct, herein known as "Code," to provide guidance to its members regarding ethical and behavioral considerations and/or actions as they address their duties and obligations during their appointment.

Compliance with the provisions of this Code will allow the Board to enhance relationships and foster teamwork among Board members and also with College staff and Faculty; and to build respect, confidence, and credibility with the donors of the organization.

Article II. **CODE OF ETHICS**

Each Board member shall adhere to the following Code of Ethics:

A. Board members shall act with integrity and in an ethical and professional manner in their interactions with each other, the Executive Director ("Director"), the College President, College employees, donors and the public.

B. Board members shall maintain high ethical and moral character, both professionally and personally, so that their behavior will reflect positively upon the Organization and the College.

C. Board members shall act with competence and shall strive to maintain and enhance their competence and that of their fellow Board members.

D. Board members shall use proper care and exercise independent professional judgment in the performance of their duties.

E. Board members shall maintain confidentiality about all matters that are considered to be non-public information.

F. Board members are required to be familiar and comply with the Organization's Conflict of Interest Policy. In addition to such compliance, and beyond the definition of "conflict of interest" contained in the Conflict of Interest Policy, Board members will meet the following criteria in order to avoid even the appearance of impropriety:

1. Board members will have no private contracts or business dealings with the Organization or College, without proper disclosure.
2. Board members will recuse themselves and will not participate in the consideration of any matter or attempt to affect the outcome of any issue before the Board when to do so might result in even the appearance of a conflict of interest as defined by the Conflict of Interest Policy.

3. Board members will not abuse their authority by using their offices to obtain favorable treatment by the College or Organization for any person.
4. Board members shall receive no payments for duties performed in their positions as Board Directors from the Organization or College or from any funds or transactions of the Organization except for appropriate compensation for reimbursement of expenses related to Board duties.

H. Board members shall exercise due diligence to avoid breaches of duty via negligence, intentional action or omission, and unauthorized communications with individuals trying to influence by improper means or seeking to receive personal gains through Board decisions.

I. Board members recognize that all Board decisions and actions are to be based on integrity, competence, and independent judgment.

Article III. **STANDARDS OF CONDUCT**

Board member shall comply with the following standards of conduct:

A. Board members shall not engage in conduct that would compromise, discredit, or diminish the integrity of the Board and/or College.

B. The Board will respect the authority of the Director and will provide instruction and direction only to the Director.

1. Board members will be sensitive to the considerable workload of the Foundation staff when making requests for assistance and all requests for assistance will be made through the Director.

2. The Board will respect the Director's authority in all personnel matters.

C. Individual Board members are not to become involved in operational management of the College.

D. Board members will operate with the understanding that they represent the citizenry of the nine county area that the College serves.

E. Board members will strive to establish sound working relationships with each other by taking time to know and appreciate each other as individuals.

1. Board members will be respectful of each other and will not utilize Board meetings to upstage or embarrass colleagues.

2. Board members will respectfully consider the opinions of others during deliberations, strive for integration of viewpoints or consensus building in decision-making, and will respect the corporate judgment of the Board in regards to its decisions.
- F. Board members will refrain from using Board meetings to advance their personal agenda.
 - G. Board members will strive to cultivate and maintain good relations with the public, press, and constituent groups; however, they will recognize their limitations to speak for the Board and refer to the Director.
 - H. Individual Board members shall refer all proposals or other communications regarding potential or existing programs, contracts, or services to the Director.
 - I. Board members shall not communicate with persons under consideration for selection by the Board and/or the Director for contracts, acquisitions, etc. while the procurement process is in progress.
 - J. A Board member shall not participate in a breach of this Code of Ethical Conduct by another member, contribute to the concealment of such breach, or knowingly or negligently allow such breach to occur.

Article IV **GIFTS**

- A. A Board member shall not solicit or receive a gift or favor from any person, company, or organization, or from any intermediary interest, that may compromise or appear to compromise the independent judgment of the member regarding his or her obligations to the Board.
- B. Any gift received by a Board member that is prohibited by this policy shall immediately be returned to its source. If a gift is immediately returned to the sender or donated to a suitable charitable organization, it will not be necessary to report the gift.

Article V **GENERAL PROVISIONS**

- A. The provisions of this policy do not excuse any Board member from other restrictions of state or federal law regarding conflicts of interest.
- B. Any breach of this Code of Ethical Conduct shall be reported to the Finance Committee and Executive Committee. The Committees will investigate, as appropriate, and report its findings and recommendations to the Board.
- C. All Board members will sign an affirmation pledging to honor and follow, according to both the letter and the spirit, this Code of Ethics and Conduct.

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