

**STATE DEPARTMENT OF EDUCATION
NOVEMBER 24, 2014**

| TAB | DESCRIPTION | ACTION |
|------------|---|-------------------|
| 1 | BOISE STATE UNIVERSITY – LITIGATION | Motion to Approve |
| 2 | BOISE STATE UNIVERSITY – RESEARCH FOUNDATION | Motion to Approve |

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BUSINESS AFFAIRS & HUMAN RESOURCES
NOVEMBER 24, 2014

BOISE STATE UNIVERSITY

SUBJECT

Boise State University seeks permission to initiate litigation.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Boise State University is seeking approval for the authority to initiate litigation where the amount in controversy could exceed \$200,000, pursuant to Policy V.W.2.

Attorneys from Boise State University have communicated with the Board members regarding this matter under Attorney-Client Privilege. The advent of such litigation is not yet necessary, but should it become necessary, the University seeks permission to initiate appropriate litigation.

IMPACT

If approved, the University will have the authority to initiate litigation in the matter.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to initiate litigation pursuant to State Board Policy, Section V.W.2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 24, 2014

BOISE STATE UNIVERSITY

SUBJECT

Formation of a Research Foundation

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.E.
Internal Revenue Code § 170(b)(1)(A)
Internal Revenue Code § 501(c)(3)
Internal Revenue Code § 509(a)(1) *et seq.*

BACKGROUND/DISCUSSION

Boise State University seeks approval to establish the Boise State University Research Foundation (Research Foundation), a 501(c)(3) entity formed to support the University's work in the areas of research, public service and other educational pursuits. The Research Foundation will foster cooperative research endeavors with public and private enterprises including institutions of learning, private businesses, individuals, and government agencies. These collaborations will lead to the dissemination and application of knowledge, discoveries, inventions and technologies for the greatest public good.

Pursuant to Board policy V.E.6., the University requests a variance from Board policies V.E.2(b)(vi) and V.E.2(c)(i)(1) and (ii)(2). Specifically, the University seeks approval for its VP for research and economic development to serve ex officio as the chair of the Research Foundation board and for the University's VP for finance and administration to serve ex officio as a Research Foundation board member. The University's president will appoint two faculty or staff members who are neither key administrators nor function in a policy-making capacity for the University to the Research Foundation board. The other three Research Foundation board members will be members of the community elected by a majority vote of the University board members.

The purpose of the variance request is to allow the University to establish the Research Foundation as a 509(a)(3) supporting organization, a controlled entity. The reasons for seeking 509(a)(3) status are strategic, operational and financial. First, the University believes it is prudent to retain control over any organization that may ultimately hold its intellectual property. In addition, it is important that the University be involved in shaping the Research Foundation's role and strategic initiatives, particularly during its inception and early years of operation.

Operational and financial reasons for organizing the Research Foundation as a controlled entity include:

1. Tax-exempt 509(a)(3) supporting organizations are classified as public charities thus avoiding the burdensome regulatory requirements placed on

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private foundations including minimum annual asset distributions, disadvantaged deductibility limits for donors, grant restrictions, and excise taxes on certain transactions; and

2. Tax-exempt 509(a)(3) organizations are not obligated to demonstrate public support through either the 509(a)(1) contributions test or the 509(a)(2) revenue test; public charity status is dependent solely upon the supported organization's (the University) qualifying status pursuant to §§ 509(a) and 170(b)(1)(A).

In accordance with Board policy V.E., the proposed operating agreement, Attachment 1, addresses the following:

- University Resources and Services
 - Terms for loaning University employees to the Research Foundation
 - Terms for University support staff services
 - Terms for use of University facilities and equipment
- Management and Operation of the Research Foundation
 - Applications for grants and sponsored programs
 - Acquisition of real property
 - Fund transfers between the Research Foundation and the University
 - Transfer of University assets to the Research Foundation
 - Transfer of University intellectual property rights to the Research Foundation
 - Separation of funds
- Research Foundation Relationship with the University
 - University representation on the Research Foundation's board
 - University access to the Research Foundation's records
 - Supplemental compensation of University employees
- Audits and Reporting Requirements
 - Annual audit requirement
 - Separate audit rights
 - Annual report to University
- Conflicts of Interest and Code of Ethics and Conduct
 - Conflict of interest
 - Contractual obligation of the University
 - Acquisition or development of real estate
- Terms
 - Right to terminate
 - Dispute resolution
 - Dissolution of the Research Foundation
 - State Board of Education approval
 - Liability
 - Indemnification

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IMPACT

As a separate legal entity with its own board of directors, the Research Foundation will conduct its own activities and manage its own finances and daily operations. As long as the Research Foundation follows all corporate formalities and both the University and the Research Foundation treat the Research Foundation as a separate legal entity, it will enjoy the limited liability protections afforded to Idaho corporations. Additionally, as a separate non-governmental entity, the Research Foundation may hold an equity interest in outside corporations.

Employees responsible for managing the day-to-day activities of the Research Foundation will either be employed solely by the Research Foundation or loaned employees subject to the provisions of the loaned employee agreement. In no case will a University vice president serve as the executive director of the Research Foundation.

In accordance with the operating agreement, the University may extend a limited line of credit to the Research Foundation until it is fully self-supporting. For the remainder of the current fiscal year, the University requests permission to extend a line of credit not to exceed \$75,000 to the Research Foundation with interest to be charged at London Interbank Offered Rate (LIBOR). Subsequent requests to extend a line of credit will be presented to the Board for approval as part of the University's annual budget approval process. The line of credit will be negotiated at arms-length with terms appropriate for the relationship between the University and the Research Foundation.

ATTACHMENTS

| | |
|---|---------|
| Attachment 1 – Proposed Operating Agreement | Page 5 |
| Exhibit A – Loaned Employee Agreement | Page 17 |
| Exhibit B – Administrative Support Services Agreement | Page 24 |
| Exhibit C – Articles of Incorporation | Page 26 |
| Exhibit D – Bylaws | Page 30 |

STAFF COMMENTS AND RECOMMENDATIONS

BSU is requesting a variance from Policy V.E.'s requirement of independence in order to control the entity that may hold its intellectual property. BSU's Foundation is set up as a non-profit corporation, a separate legal entity from BSU. Its Board of seven, however, is controlled by BSU. BSU's vice president of research will chair the Foundation. (It is noteworthy that the vice president for research serves three distinct yet overlapping roles: a university vice president, the university's "liaison" to the Research Foundation, and Chair of the Research Foundation Board.) BSU's vice president of finance is the second *ex officio* member. The president of BSU will appoint the two faculty or staff members. The four BSU employees then select the three community members. BSU's stated need for the variance from the requirement of independence is that it believes that it is prudent to retain control over the entity that might hold its

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intellectual property interests. The Board will need to weigh whether that reason outweighs the need for independence.

In contrast, Idaho State University's (ISU) Intellectual Property Foundation (the formation of which was approved by the Board in August 2014) with a stated purpose similar to that of BSU's foundation, is governed separately from the institution: two directors are ISU employees appointed by ISU's president and the three remaining directors are from the private sector appointed by the foundation board.

BOARD ACTION

I move to approve the request by Boise State University to establish the Boise State University Research Foundation, to obtain a variance as outlined herein pursuant to Board policy V.E.6, to enter into the proposed Operating Agreement, Loaned Employee Agreement and Administrative Support Services Agreement in substantial conformance with the documents attached hereto, and to approve an initial line of credit to the Research Foundation not to exceed \$75,000 consistent with the terms herein.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**OPERATING AGREEMENT
BETWEEN
BOISE STATE UNIVERSITY
AND
THE BOISE STATE UNIVERSITY RESEARCH FOUNDATION, INC.**

This agreement ("Operating Agreement") is entered into effective the ____ day of _____ 2014 by and between the Boise State University ("University") and the Boise State University Research Foundation, Inc. ("Research Foundation"). The University and Research Foundation are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

WHEREAS, Research Foundation is a nonprofit corporation incorporated on_____, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Research Foundation will apply for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Research Foundation's purpose and mission is to support the education, research and public service functions of the University

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

WHEREAS, the Idaho State Board of Education (the "State Board") has promulgated Policies and Procedures effective as of October of 2014 ("State Board's Policies and Procedures");

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

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

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

ARTICLE I

RESEARCH FOUNDATION'S PURPOSES

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

In carrying out its purposes, the Research Foundation shall not engage in activities that conflict with 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); applicable polices of the State Board; or the role and mission of the University.

ARTICLE II

RESEARCH FOUNDATION'S
ORGANIZATIONAL DOCUMENTS

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

ARTICLE III

UNIVERSITY RESOURCES AND SERVICES

A. *University Employees.*

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

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

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

2. The University and Research Foundation may elect to enter into agreements for the loaning of employees to the Research Foundation by the University pursuant to terms

substantially similar to the Loaned Employee Agreement attached as Exhibit A. The loaned employees shall report to either the Research Foundation Board or the Executive Director of Research Foundation, in either case as determined by the Research Foundation Board and as specified in the loaned employee agreements. In no case will a University Vice President serve as the Executive Director of the Research Foundation.

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

B. *Support Staff Services.* The University may provide administrative support in financial, accounting, and research compliance services to the Research Foundation, as set forth in the Service Agreement attached hereto as Exhibit B. Except as specifically provided otherwise herein, all University employees who provide support services to the Research 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 Research Foundation in a Loaned Employee Agreement. The Research Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Research Foundation pursuant to the Service Agreement or as otherwise determined by the agreement of the Parties.

C. *University Facilities and Equipment.* The University may provide the use of the University's office space, laboratory space and equipment and associated services to the Research Foundation's employees upon the terms agreed to by the University and the Research 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.

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

ARTICLE IV

MANAGEMENT AND OPERATION OF THE RESEARCH FOUNDATION

A. *Research Grant and Sponsored Programs.*

Applications for Grants and Sponsored Programs. Any and all Research Foundation applications for Grants or Sponsored Programs shall make clear to prospective grantors that the Research Foundation is a

separate legal and tax entity organized for the purpose of conducting research consistent with the charitable, scientific, literary, research, educational, and service goals of the University and acquiring and disseminating knowledge, supporting the education, research, and public service functions of the University and that responsibility for the governance of Research Foundation, including performance of the terms of any grants or sponsored program, resides in the Research Foundation's Board of Directors.

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

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

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

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

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

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

D. *Research Foundation Expenditures and Financial Transactions.*

1. *Signature Authority.* The Research Foundation designates the Research

Foundation Chairperson as the individual with signature authority for the Research Foundation in all financial transactions. The Research Foundation's Chairperson may delegate signature authority on a temporary basis consistent with the Research Foundation's Bylaws to another Research Foundation employee, a University employee loaned to the Research Foundation, or a Research Foundation Board member.

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

E. *Transfer of University Financial Assets to Research Foundation.* While the goal is for the Research Foundation to be self-supporting, the University may, from time to time, transfer funds to the Research Foundation to support it in pursuing its purpose and allow it to fulfill its responsibilities hereunder. Proposed funding requirements for the Research Foundation will be determined on an annual basis as part of the operating budget process, but presented to the State Board for approval in a separate review. Funding transfers will constitute a debt the Research Foundation will be contractually obligated to repay in accordance with terms proposed by the University and approved by the State Board.

F. *Transfer of University Intellectual Property Rights to Research Foundation.* The University may convey, license or assign intellectual property rights to the Research Foundation. All such transfers of intellectual property will be made pursuant to State Board policies and guidelines, University policies, and state and federal law. Such transfers shall be made pursuant to a written agreement detailing the financial arrangement between the Parties applicable to the intellectual property conveyance.

G. *Separation of Funds.* All Research Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Research Foundation using the Research Foundation's Federal Employer Identification Number. The financial records of the Research Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database that is protected by separate password-only access. For convenience, however, some Research 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 Research Foundation and shall be reimbursed by the Research Foundation on a regular basis.

H. *Insurance.* The Research Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Research Foundation shall also maintain general liability coverage.

I. *Organizational Structure of Research Foundation.* The organizational structure of the Research Foundation is set forth in the Research Foundation's Articles of Incorporation which are attached hereto as Exhibit C and the Research Foundation's Bylaws, which are attached at Exhibit D. The Research Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to the University. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit C and Exhibit D, respectively.

J. *Equity Positions and Cash Investments.* The Research Foundation will not be involved in the day to day operations in any company in which it holds an equity interest but will exercise its voting rights in its own best interests. The Research Foundation will not use funds that it receives from

the University to make a cash investment in any company in return for equity, nor will the Research Foundation hold a majority interest in a corporation without prior approval of the State Board.

ARTICLE V

RESEARCH FOUNDATION RELATIONSHIPS WITH THE UNIVERSITY

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

B. *University's Representation on Research Foundation's Board.* The University will be allowed representation on the Research Foundation's Board of Directors as set forth in the Bylaws as attached hereto, the terms of which, with respect to appointment of the Board members and University representation on the Board, shall not be changed without the prior written agreement of the University and approval of the State Board.

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

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

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

F. *Research Compliance.* The Research Foundation shall be responsible for all matters pertaining to research compliance.

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

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

information protected by trade secret or by specific confidentiality agreements.

I. *Records Management.*

1. The Research Foundation shall be responsible for maintaining all permanent records of Research Foundation including but not limited to the Research Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with Internal Revenue Service regulations, research grants, and all other Research Foundation records as required by applicable laws.

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

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

K. *Establishing Research Foundation's Annual Budget.* The Research Foundation shall provide the University with its proposed annual operating budget and any capital expenditure plans prior to the date of the Research Foundation's Board of Directors meeting at which the Research Foundation's Board of Directors will vote to accept such operating budget and expenditure plan.

L. *Attendance of the University's Representatives at Research Foundation's Board of Director Meetings.* The University's President and a designated representative from the Office of the General Counsel shall be invited to attend all meetings of the Research Foundation's Board of Directors.

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

ARTICLE VI

AUDIT AND REPORTING
REQUIREMENTS

A. *Fiscal Year.* The Research Foundation and the University shall have the same fiscal year.

B. *Annual Audit.* The Research Foundation shall have an annual financial audit conducted in accordance with Government Accounting Standards Board or Financial Accounting Standards Board principles as appropriate. The audit shall be conducted by an independent certified public accountant who is not a director or officer of the Research Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Research Foundation's Board of Directors. Such audit reports shall contain the Research Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

C. *Separate Audit Rights.* The University agrees that the Research 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 granted funds from the Research Foundation. The Research Foundation agrees that the University, at its own expense, may, at reasonable times, inspect and audit the Research Foundation's financial books and accounting records in accordance with this Agreement.

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

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

ARTICLE VII

CONFLICT OF INTEREST AND CODE OF ETHICS AND
CONDUCT

A. *Conflicts of Interest Policy Statement.* The Research Foundation will adopt a written policy addressing the manner in which it will address conflict of interest situations.

B. *Contractual Obligation of University.* The Research 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. University approval of any such contract shall comply with policies of the State Board with respect to the State Board's approval of University contracts.

C. *Acquisition or Development of Real Estate. Acquisition of Real Property.* The Research Foundation shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Research Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Research Foundation.

ARTICLE VIII

GENERAL TERMS

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

B. *Right to Terminate.* This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, either Party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either Party may terminate this Operating Agreement in the event the other Party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Research Foundation that is not cured within the time frame set forth above, the Research Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Research Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Research 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 Research Foundation to pay any debt it holds on behalf of Research 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 negotiations fail, the Parties will initiate the Dispute Resolution mechanism described below (through reference to the Research Foundation's Board of Directors and the State Board) to further attempt to negotiate a new agreement. Termination of this Operating Agreement shall not constitute or cause dissolution of the Research Foundation, provided however, in the event a new operating agreement is not achieved upon completion of the dispute resolution process, the association between the Research Foundation and the University will be ended, and the Research Foundation will cease all references to the University in its name and with respect to its operations other than as is necessary to complete projects or contracts pending as of the final date of the dispute resolution process.

C. *Dispute Resolution.* The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Research Foundation's Board of Directors and the University's President. If the Research Foundation's Board of Directors and University's President cannot resolve the dispute, then the dispute will be referred to the Research Foundation's Board of Directors and the State Board for resolution. If the aforementioned Parties do not resolve the dispute, the University and the Research Foundation shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

D. *Dissolution of Research Foundation.* Upon dissolution of the Research Foundation, it shall transfer the balance of all property and assets of the Research Foundation in a manner consistent with its Articles of Incorporation.

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

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

G. *Providing Document to and Obtaining Approval from the University.* Unless otherwise indicated herein, whenever documents are to be provided to the University or whenever the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's Vice President for Finance and Administration.

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

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

To the University:

Vice President for Finance and Administration
Boise State University
1910 University Drive
Boise, Idaho 83725

With copy to:

Office of the General Counsel
Boise State University
1910 University Drive
Boise, Idaho 83725

To Research Foundation:

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

K. *Liability.* The University and Research 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.

L. *Indemnification.* To the extent allowed by Idaho law, the University and Research 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 Idaho laws, including the Idaho Tort Claims Act.

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

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

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

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

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

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

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

Boise State University

Boise State University Research Foundation,
Inc.

Robert Kustra, PhD., President

Mark Rudin, PhD., Chairman of the Board

EXHIBIT A

LOANED EMPLOYEE AGREEMENT

This AGREEMENT is entered into by and between the BOISE STATE UNIVERSITY, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the State of Idaho ("University"), and the BOISE STATE UNIVERSITY RESEARCH FOUNDATION ("Research Foundation") and is effective the __day of _____, 2014.

BACKGROUND

WHEREAS, the Research Foundation has asked University to make certain university employees available to the Research Foundation for fulfilling various operational requirements of the Research Foundation;

WHEREAS, University desires to make certain employees available to the Research Foundation to assist the Research Foundation in achieving its mission as set forth in the Operating Agreement between the Research Foundation and University; and

WHEREAS, University has agreed to loan its certain employee, _____ ("Loaned Employee"), to the Research Foundation to act in the capacity of _____ for the Research Foundation pursuant to the terms of this Agreement.

AGREEMENT

The parties agree as follows:

A. Relationship between Loaned Employee and University.

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

2. Compensation. University shall pay Loaned Employee a **[insert either fiscal or academic here]** year salary rate of \$_____ payable on the regular biweekly paydays of the University, and subject to adjustment in accordance with the University's regular policies and procedures. Loaned Employee will be entitled to University benefits to the same extent and on the

same terms as other full-time University employees of her/his classification. The Research Foundation shall pay University for this cost as provided in this Agreement. Any supplemental compensation payable to employee shall also be subject to the requirements of this section.

3. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for the Research Foundation travel that is approved in advance by the Research Foundation or the University. The Research Foundation shall pay the University for this cost as provided in this Agreement.

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

B. Relationship between the Research Foundation and Loaned Employee.

1. Supervision. Loaned Employee will work full-time under the supervision and direction of the Research Foundation Board of Directors. Loaned Employee will report directly to the Research Foundation Executive Director or her/his designee, who shall determine her/his duties for the Research Foundation.

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

C. Relationship between the Research Foundation and University

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

2. University to Provide Salary and Benefits. As indicated above, University shall provide Loaned Employee with a(n) **[insert either fiscal or academic here]** year salary rate of \$_____ and other University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's

compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee. To the extent allowed by Idaho law, University shall indemnify, defend, and hold the Research Foundation harmless for the payment of all items set forth herein and any claims or losses resulting from the administration of any employee benefits pursuant to any applicable law including, without limitation, the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Internal Revenue Code.

3. Reimbursement of Salary and Benefits by the Research Foundation. The Research Foundation will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits and any reimbursable costs such as travel expenses. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, the Research Foundation shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of five (5) years following the termination of this Agreement.

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

5. Indemnification by the Research Foundation for Act of Loaned Employee. University shall have no liability to the Research Foundation for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing activities on behalf of or at the direction of the Research Foundation. the Research Foundation therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, the State Board of Education, the University and its officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of the Research Foundation or others) arising out of, or in connection with, the activities of the Loaned Employee performed on behalf of or at the direction of the Research Foundation. Notwithstanding the foregoing, both parties may maintain any liability insurance coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

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

D. General Terms

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

a. Notice to University Due to Loaned Employee Performance Problems. The Research Foundation may discipline Loaned Employee pursuant to this Agreement by taking action up to and including termination of this Agreement for cause based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance. If the Research Foundation makes such a determination, the Research Foundation shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason the Research Foundation is discontinuing the services of Loaned Employee; or

b. Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to the Research Foundation upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) days' notice of the default and an opportunity to cure such default within the notice period; or

c. Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to the Research Foundation shall automatically terminate if Loaned Employee is no longer an employee of University for any reason. The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee's renewed contract with the University. the Research Foundation is under no obligation to extend the term of this Agreement for a new term, however, in the event the Research Foundation determines that it will not agree to an extension of the term of this Agreement the Research Foundation will give University notice of its intention not to extend the term of this agreement at least 60 days prior to the expiration of the term of this Agreement,

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

3. 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 Ada County.

4. Notice. Any notice made 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 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 the Research Foundation:

To UNIVERSITY:

Vice President for Finance and Administration
Boise State University
1910 University Drive
Boise, ID 83725

With copy to:

Office of the General Counsel
Boise State University
1910 University Drive
Boise, Idaho 83725

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

5. 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.

6. 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.

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

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

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

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

BOISE STATE UNIVERSITY

BOISE STATE UNIVERSITY RESEARCH
FOUNDATION

Stacy Pearson, Vice President
Finance and Administration

Mark Rudin, Chairman of the Board

Acknowledgment by Loaned Employee:

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

Signed: _____

Name: _____

EXHIBIT B

ADMINISTRATIVE SUPPORT SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT is entered into by and between the BOISE STATE UNIVERSITY, a public institution of higher education in the State of Idaho ("University"), and the Boise State University Research Foundation, Inc. ("Research Foundation").

The University agrees to provide to the Research Foundation the following administrative, financial, and accounting, support services:

1. Administrative Support for the Research Foundation's general accounting and operations, including cash, receivables, and disbursement processing, preparation of financial statement and work papers for external audit, support for the Research Foundation Audit Committee, and support for the Research Foundation tax return filings;
2. Administrative support for the Research Foundation through the University Human Resources Office, including payroll and benefits management;
3. Administrative support, including support for Research Foundation grant and contract management and compliance for the Research Foundation, through the University's Offices of Sponsored Programs and Research Compliance in the Division of Research and Economic Development; and
4. Administrative support for the Research Foundation, including support of technology management, protection, and licensing through the University's Office of Technology Transfer in the Division of Research and Economic Development.

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

The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the Research Foundation, 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 Research Foundation Executive Director the nature and location of which shall be subject to agreement of the Parties.

The Research Foundation will pay directly to the University a reasonable consideration for the services, facilities, equipment, software and operating supplies provided to the Research Foundation 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 Research Foundation for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

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

This Services Agreement shall be effective as of the date of the last signature thereto and shall

continue in annual terms matched to the University's fiscal year until terminated by either party.

This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective sixty (60) days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Operating Agreement between the University and the Research Foundation dated_____. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement that accrued prior to the date of termination.

BOISE STATE UNIVERSITY

BOISE STATE UNIVERSITY RESEARCH
FOUNDATION, Inc.

Stacy Pearson, Vice President
Finance and Administration

Mark Rudin, Chairman of the Board

Date: _____

Date: _____

EXHIBIT C

**ARTICLES OF INCORPORATION
OF BOISE STATE UNIVERSITY RESEARCH FOUNDATION**

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

FIRST: The name of the Corporation is: Boise State University Research Foundation ("Research Foundation").

SECOND: The registered office of the Research Foundation is in the State of Idaho and is located at _____. The name and address of its registered agent is _____.

THIRD: The Research Foundation is organized and shall at all times be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of Boise State University ("University"), a state institution of higher education described in section 509(a)(1) of the Internal Revenue Code of 1986 (or the corresponding section of any future United States Revenue Law), to include the following:

- a. Promoting and assisting the educational, research, community service and economic development objectives of the University, and applying the funds and properties in its possession in order to further these objectives;
- b. Supporting scientific research in areas deemed appropriate by the University and consistent with the charitable, scientific, literary, research, educational and service goals of the University;
- c. Acquiring and disseminating knowledge, and supporting the education, research, economic development and public service functions of the University;
- d. Executing, administering, letting and performing any and all contracts, subcontracts and agreements desirable and proper in order to perform and complete the activities of the Research Foundation including, without limitation, contracts and agreements with the University and other entities;
- e. Acquiring facilities by lease, purchase, donation, exchange, transfer, gift or otherwise, and operating such facilities as may be desirable in order to carry out the charitable, scientific, literary, research, educational, and service programs of both the Research Foundation and the University;
- f. Purchasing or otherwise acquiring, holding, leasing, encumbering, selling, assigning, transferring, mortgaging, pledging, hypothecating, exchanging, or otherwise disposing of any securities or equity, evidence of debt or other property, real or personal, as may be desirable to support the activities of the Research Foundation and the University's research mission;

- g. Receiving real and personal property from public and private sources, receiving grants and other monies from agencies of the United States of America, the State of Idaho or other states, and receiving grants, contributions and endowments from foundations, public and private corporations, and the general public, in support of the Research Foundation or University's exempt activities; and
- h. Employing personnel and engaging contractors and consultants in order to accomplish the purposes of the Research Foundation and the University's research mission.

FOURTH: No part of the earnings of the Research Foundation shall inure to the benefit of, or be distributed to, its directors, officers, or other private persons, except that the Research 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 Article Three hereof. No substantial part of the activities of the Research Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Research Foundation shall not participate 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 these Articles of Incorporation, the Research Foundation shall not carry on any activity not permitted to be carried on by (1) an organization exempt from Federal income tax as described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), (2) an organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), or (3) an organization described in Section 509(a)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

The Research Foundation shall not have any members or capital stock and shall be strictly a non-profit, nonpolitical organization. Upon the dissolution of the Research Foundation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Research Foundation, dispose of all the assets of the Research Foundation exclusively for the purposes of the Research Foundation in such manner as the Board of Directors shall determine, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law). Any such assets not so disposed of shall be disposed of by the court of requisite jurisdiction in the county in which the principal office of the Research Foundation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine are organized and operated exclusively for such purposes. In no case will assets be distributed to private individuals.

FIFTH: (a) The name and mailing address of the incorporator are as follows:

| <u>NAME</u> | <u>MAILING ADDRESS</u> |
|-------------|------------------------|
|-------------|------------------------|

(b) The names and mailing addresses of the Directors are as follows:

| <u>NAME</u> | <u>MAILING ADDRESS</u> |
|-------------|------------------------|
|-------------|------------------------|

SIXTH: The Research Foundation shall have perpetual existence.

SEVENTH: The activities and affairs of the Research Foundation shall be managed by a Board of Directors. The number of Directors which shall constitute the whole Board shall be such as from time to time shall be fixed by, or in the manner provided in, the Bylaws.

EIGHTH: Meetings of members of the Board of Directors may be held outside the State of Idaho, if the Bylaws so provide. The books of the Research Foundation may be kept (subject to any provision contained in the Idaho Code) outside the State of Idaho at such place or places as may be from time to time designated by the Board of Directors. Elections of Directors need not be by ballot unless the Bylaws of the Research Foundation shall so provide.

NINTH: The Research Foundation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, provided, however, no change shall be made affecting its status as a non-profit organization.

ATTACHMENT 1

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

IN WITNESS WHEREOF, these Articles of Incorporation are executed in duplicate on the ___ day of _____ 2014.

Print Incorporator Name_____

STATE OF IDAHO

County of Ada

On this ___ day of _____ 2014, before me, the undersigned Notary Public in and for the State of Idaho, personally appeared _____, being first duly sworn under oath, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same.

WITNESS my hand and official seal.

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

EXHIBIT D

**BYLAWS
OF
BOISE STATE UNIVERSITY RESEARCH FOUNDATION**

ARTICLE I

NAME

The name of the Research Foundation shall be BOISE STATE UNIVERSITY RESEARCH FOUNDATION (“Research Foundation”). It is incorporated under Idaho Nonprofit Corporation Act.

ARTICLE II

GUIDING PHILOSOPHY

The directors, officers and employees of the Research Foundation will strive to enhance the ability of Boise State University (“University”) to meet its mission and goals by cooperative use of Research Foundation and University resources including facilities, faculty, researchers, staff and students. To do so, the Research Foundation will:

1. Promote ethical work standards where the highest quality of achievement is aspired to and expected;
2. Appoint and retain the highest caliber of staff and students that can be attracted where integrity, intelligence, self-motivation, expertise, performance, commitment, and fairness are prime considerations;
3. Create an efficient operation in which each individual expeditiously performs multiple tasks, as needed, to maximize quality output at the most attractive cost-performance tradeoff;
4. Create a stimulating, challenging, and fair work environment in which individuals are able to learn and advance professionally; and
5. Foster cooperative research endeavors with public and private enterprises including institutions of learning, private businesses, individuals, and government agencies, leading to the dissemination and application of knowledge, discoveries, inventions, and technology for the greatest public good.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Membership.

- a. Composition. The Board of Directors (“Board”) shall be comprised of seven

Directors, four of whom shall be “University Directors” and three of whom shall be “Community Directors.”

b. University Directors. Two of the four University Directors shall be those individuals who hold the following positions (whether permanent or acting) at the University: Vice President for Research and Economic Development and Vice President for Finance and Administration. The President of the University shall appoint two additional University Directors who must be current University faculty or staff who are neither key administrators nor function in a policy-making capacity for the University.

c. Community Directors. The University Directors shall, by a majority vote, elect three individual members of the general public to serve as Community Directors.

d. Term. University Directors who serve by virtue of their positions shall not have term limits. University Directors appointed by the President of the University shall serve four year terms, Community Directors shall serve three year terms, and each shall continue in office until his/her successor shall have been elected.

e. Removal. Any University Director who serves by reason of being a faculty or staff member of the University or any Community Director may be removed, with or without cause, at a regular or special meeting of the Directors, by the vote of a majority of all the Directors.

f. Compensation. Directors shall serve without compensation except that reasonable expenses incurred may be reimbursed for and in the interest of the Research Foundation under guidelines adopted by the Board.

Section 2. Vacancies. In the case of any vacancy with respect to a University Director who serves by reason of being a faculty or staff member of the University, a successor to fill the unexpired portion of the term shall be filled by a majority vote of the remaining University Directors. In case of any vacancy with respect to a Community Director, a successor to fill the unexpired portion of the term shall be filled by a majority vote of the University Directors. In all cases, vacancies shall be filled within ninety (90) days from the time that the vacancy occurred.

Section 3. Powers. The fundamental and basic purposes of the Research Foundation are to operate exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the University and such purpose shall not be amended or changed. Within the structure of Sections 1 and 2 above, the Board of Directors shall have the power to manage and control the affairs and property of the Research Foundation; shall have the power, by majority vote, to adopt rules and regulations governing the actions of the Board and shall have full authority with respect to the activities of the Research Foundation, including fund transfers. The Board of Directors shall not permit any part of the net earnings or capital to inure to the benefit of any Director or other private individual who is related to or affiliated with the Research Foundation, and the sole beneficiary of such earnings or capital shall always be the University.

Section 4. Meetings. The Board of Directors may hold its meetings at such place or places within or without the State of Idaho as the Board may from time to time determine. Regular meetings of the Board of Directors shall be held at such time and place as may be determined by the Board, and when the schedule of regular meetings has been established, no further notice of such regular meetings need be given. Regular and special meetings may be conducted by telephone conference call. To the extent permitted by law, a resolution in writing, signed by at least 80 percent of the Directors, shall be as valid as if it had been passed at a meeting of the Directors duly called and constituted.

Section 5. Special Meetings. Special meetings of the Board may be called by the Chairperson of the Board ("Chair") or by the Secretary upon the written request of a majority of the Directors. Notice of the time, place and purpose of every special meeting of the Board shall be given by the Secretary by mailing (including electronic mail) or delivering the same to each Director, at least twenty-four (24) hours before the meeting.

Section 6. Open Meetings. All meetings of the Board shall be open and public, and all persons shall be permitted to attend any meeting of the Board; provided, however, that the Board may hold closed sessions during any regular or special meeting to consider those matters that may lawfully be considered in such sessions.

Section 7. Resignations. Any University Director who serves by reason of being a faculty or staff member of the University or any Community Director may resign at any time. Such

resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chair or Secretary. The acceptance of the resignation shall not be necessary to make it effective.

Section 8. Quorum. A majority of the Directors in office shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, the Directors present shall adjourn the meeting until a quorum is obtained, and at any meeting subsequent to the adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 9. Proxy Voting. Proxy voting shall not be permitted.

ARTICLE IV

OFFICERS OF THE BOARD AND EXECUTIVE DIRECTOR

Section 1. Positions. The officers of the Research Foundation Board shall be a Chair, a Vice-Chair, a Secretary, a Treasurer and such other officers, if any, as the Board of Directors may from time to time appoint.

Section 2. Agents. The Board of Directors may appoint from time to time such agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

Section 3. Chair: Powers and Duties. The Chair of the Research Foundation Board shall be the University's Vice President for Research and Economic Development and shall preside at all meetings of the Board of Directors. He/she shall have general supervision of the affairs of the Research Foundation and shall keep the Board of Directors fully informed and shall freely consult with them concerning the activities of the Research Foundation. He/she shall have power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Research Foundation all contracts authorized either generally or specifically by the Board. He/she shall perform such other duties as shall from time to time be assigned to him/her by the Board of Directors.

Section 4. Vice-Chair: Powers and Duties. The Vice-Chair of the Research Foundation Board shall be a Board member elected to that position by a majority of the Board and shall have such powers and duties as may be assigned to him/her by the Board of Directors. In the absence of the Chair, or as delegated by the Chair, the Vice-Chair shall perform the duties of the Chair.

Section 5. Secretary: Powers and Duties. The Secretary of the Research Foundation Board shall be a Board member elected to that position by a majority of the Board. He/she shall serve in that capacity until such time as his/her successor has been elected. The Secretary shall act as secretary of all meetings of the Board of Directors and shall keep the minutes of all such meetings in the books proper for that purpose. He/she shall attend to the giving and serving of all notices of the Research Foundation. He/she shall, in coordination with the Research Foundation Chairperson, establish the agenda for Research Foundation meetings. He/she shall perform all the duties customarily incident to the office of Secretary, subject to the control of the Board of Directors, and shall perform such other duties as shall from time to time be assigned to him/her by the Board of Directors. The Secretary shall be authorized to certify by signature copies of resolutions duly adopted by the Board of Directors.

Section 6. Treasurer: Powers and Duties. The Treasurer of the Research Foundation Board shall be a Board member elected to that position by a majority of the Board and shall have the custody of all funds and securities of the Research Foundation that may come into his/her hands. He/she shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Research Foundation, and shall deposit all moneys and other valuable effects of the Research Foundation in such banks or depositories as the Board of Directors may designate. He/she shall record and submit at least once each year to the Board of Directors a report of the receipts and disbursements, which the Board may, in its discretion, cause to be audited by a firm of chartered or certified accountants of its selection before approving the same. Whenever required by the Board of Directors, he/she shall render a statement of accounts. He/she shall at all reasonable times exhibit the books and accounts to any officer or Director of the Research Foundation, and shall perform all duties incident to the position of Treasurer subject to the control of the Board of Directors. The Treasurer shall, when required, give such security for the faithful performance of his/her duties as the Board of Directors may determine.

Section 7. Executive Director. The Board of Directors shall appoint an Executive Director of the Research Foundation who will report to and serve at the pleasure of the Board of Directors. The Executive Director, working together with the Board of Directors and officers of the Research Foundation, shall be responsible for providing direction and leadership toward the achievement of the Research Foundation's mission, strategy, goals, and objectives.

ARTICLE V
COMMITTEES

The Board may appoint one or more committees, each consisting of three or more Directors, and delegate to such committees such duties and responsibilities as the Board may deem appropriate except with respect to the following:

- a. The filling of vacancies on the Board or in any committee;
- b. The fixing of compensation of the Directors for serving on the Board or on any committee, should the Bylaws be amended to allow such compensation;
- c. The amendment or repeal of Bylaws or the adoption of new Bylaws;
- d. The amendment or repeal of any resolution of the Board;
- e. The appointment of other committees of the Board or the members thereof; or
- f. The approval of any self-dealing transaction.

Any such committee must report to the Board of Directors on its progress and actions at each Board meeting.

ARTICLE VI
GIFTS AND CONTRIBUTIONS

The Research Foundation will seek a determination from the Internal Revenue Service that it is exempt from federal income tax as an organization described in Internal Revenue Code §501(c)(3) and that contributions to the Research Foundation are deductible as charitable contributions under Internal Revenue Code §170. Should the Research Foundation receive a determination that it is exempt from federal income tax, it will perform any act required to retain such tax-exempt status and will refrain from conducting any activities forbidden by Internal Revenue Code §501(c)(3). As such, the following shall apply:

- a. Contributions and gifts may be solicited by representatives assigned by the Chair to promote, sponsor and carry out the purposes of the Research Foundation;
- b. Unless otherwise provided by the donor, all contributions received by the Research Foundation shall be deposited and held by the Research Foundation and may be used and disbursed by the Board to promote, sponsor and carry out the purposes for which the Research Foundation is organized;
- c. The limitations and restrictions upon any grant, gift, donation, bequest or devise shall be respected. Restricted gifts shall conform to all applicable state and federal laws and regulations; and
- d. The operating expenses of the Research Foundation may be defrayed by funds contributed directly to the Research Foundation or from income and other resources of the Research Foundation, from whatever source realized, except as restricted or specified in paragraph (c) above.

ARTICLE VII

CONTRACTS, CHECKS, BANK ACCOUNTS, INVESTMENTS, ETC.

Section 1. Selection. The Board of Directors is authorized to select such depositories as it shall deem proper for the funds of the Research Foundation and shall determine who shall be authorized on the Research Foundation's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts, and documents.

Section 2. Investments. The funds of the Research Foundation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board of Directors in its sole discretion may deem beneficial to the furtherance of the purposes and objectives of the Research Foundation.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Research Foundation shall be from July 1 – June 30.

ARTICLE IX

NOTICE AND WAIVER OF NOTICE

Whenever any notice is required by these Bylaws to be given, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by certified mail addressed to the person entitled thereto at his/her last known post-office address,

and such notice shall be deemed to have been given on the day of such mailing. Any notice required to be given by law or under these Bylaws may be waived by the person entitled thereto, and his/her attendance, either in person or by proxy, at any meeting shall constitute a waiver of notice thereof.

ARTICLE X

OFFICE

Section 1. Registered Office. The registered office of the Research Foundation shall be located in the City of Boise, Idaho.

Section 2. Other Offices. The Research Foundation may also maintain offices at such other places, either within or outside the State of Idaho, as the Board of Directors may from time to time require.

ARTICLE XI

INDEMNIFICATION

The Research Foundation shall indemnify officers and members of the Board of Directors who may be a party (or who may be threatened to be made a party) to any action or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he/she is an officer or Director of the Research Foundation, and who is acting within the normal exercise of Board of Director functions, and exercising fiduciary responsibility. The indemnification shall include all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement that are actually and reasonably incurred by the officer or Director in connection with such action, suit or proceeding, provided that the officer or Director acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Research Foundation. If the action is criminal, in order to be indemnified, the officer or Director must have had no reasonable belief that his/her conduct was unlawful. In all respects, the indemnification provided for under this Article IX shall be in accordance with the indemnification provisions set forth in Section 30-3-88 of the Idaho Nonprofit Corporation Act. The Board shall budget sufficient funds in its annual budget for liability insurance that will assure full compliance with this article.

ARTICLE XII
AMENDMENTS, ETC.

These Bylaws may be amended, added to, or repealed by the Board of Directors by majority vote of the Directors then in office, provided notice of intention to amend the Bylaws shall be mailed to each Director at least five days before the meeting.