

**AUDIT
DECEMBER 17, 2020**

TAB	DESCRIPTION	ACTION
1	FY 2020 FINANCIAL STATEMENT AUDITS	Motion to approve
2	FY 2020 FINANCIAL RATIOS	Information item
3	FY 2020 NET POSITION REPORTS	Information item
4	BSU FOUNDATION OPERATING AGREEMENT	Motion to approve

AUDIT
DECEMBER 17, 2020

SUBJECT

College/University FY2020 audit findings reported by the Idaho State Board of Education's external auditor

APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.H.4.f.

BACKGROUND/DISCUSSION

The Idaho State Board of Education (Board) has contracted with Moss Adams LLP, an independent certified public accounting firm, to conduct the annual financial audits of Boise State University, Idaho State University, University of Idaho and Lewis-Clark State College.

The financial audits for FY2020 were conducted in accordance with Generally Accepted Government Auditing Standards and include an auditor's opinion on the basic financial statements prepared by each of the four institutions.

IMPACT

There was one significant deficiency for University of Idaho related to a lack of adequate controls surrounding financial close and reporting. As of agenda preparation, Moss Adams was waiting for federal guidance for auditing Coronavirus funding for the Uniform Guidance audit. Pending that audit, there could be additional findings related to internal controls for federal expenditures.

ATTACHMENTS

Attachment 1 - Moss Adams Audit Results Report
Attachment 2 - Draft University of Idaho Audit Finding

STAFF COMMENTS AND RECOMMENDATIONS

On November 10, 2020, Moss Adams reviewed their audit findings with members of the Audit Committee and Board staff. This was followed by presentations by senior managers from the college and universities on their financial statements. Staff recommends acceptance of the financial audit reports submitted by Moss Adams.

BOARD ACTION

I move to accept from the Audit Committee the Fiscal Year 2020 financial audit reports for Boise State University, Idaho State University, University of Idaho, and Lewis-Clark State College, as submitted by Moss Adams LLP in Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Idaho State Board of Education

Audit Committee

Presentation of Audit Results

November 10, 2020

**Idaho State University
Boise State University
Lewis-Clark State College
University of Idaho**

**Scott Simpson
Pam Cleaver
Tammy Erickson**

Idaho State Board of Education

Audit Committee Debrief

November 10, 2020

Moss Adams Leadership Team

Your Partners

Scott Simpson, Partner	541-686-1040	scott.simpson@mossadams.com
Pam Cleaver, Partner	509-248-7750	pam.cleaver@mossadams.com
Tammy Erickson, Partner	509-747-2600	tammy.erickson@mossadams.com

Contract Deliverables

For each institution

- Auditor's Report on Financial Statements – GAAS
- Auditor's Report on Financial Statements – GAGAS
- Auditor's Report on Compliance in Accordance with OMB Uniform Guidance
- Required Communication – AU 260
- AU 265 Letters & Management Letters

Additional items for individual institutions

- NCAA Agreed-Upon Procedures for UI, BSU, ISU Presidents
- Auditor's Report on Financial Statements for Boise State Radio

Idaho State Board of Education

Audit Committee Debrief – cont.

November 10, 2020

Financial Statement Opinion	Internal Control		Uniform Guidance	
	Material Weakness	Significant Deficiency	Opinion	Findings

Idaho State University	Unmodified	None	None	TBD	TBD
Boise State University	Unmodified	None	None	TBD	TBD
Lewis-Clark State College	Unmodified	None	None	TBD	TBD
University of Idaho	Unmodified	None	One	TBD	TBD

Required Communications To Those Charged With Governance	<i>Idaho State University</i>	<i>Boise State University</i>	<i>Lewis-Clark State College</i>	<i>University of Idaho</i>
Auditor's Responsibility Under Generally Accepted Auditing Standards	As Planned	As Planned	As Planned	As Planned
Planned Scope and Timing of the Audit	As Planned	As Planned	As Planned	As Planned
Significant Accounting Policies	FN 1	FN 1	FN 1	FN 1
Significant Accounting Estimates	As Discussed	As Discussed	As Discussed	As Discussed
Financial Statement Disclosures	5, 7, 10, 11, 12	5, 8, 10, 11, 12, 15	5, 8, 9	6, 9, 10, 11, 12, 13, 14
Significant Difficulties Encountered During the Audit	None	None	None	None
Corrected and Uncorrected Misstatements	None	None	None	None
Disagreements with Management	None	None	None	None
Management Representations	Available	Available	Available	Available
Management Consultations with Other Accountants	None	None	None	None
Other Significant Findings or Issues	None	None	None	None
Internal Control Matters to be Reported	None	None	None	Yes
Fraud Uncovered During the Audit	None	None	None	None



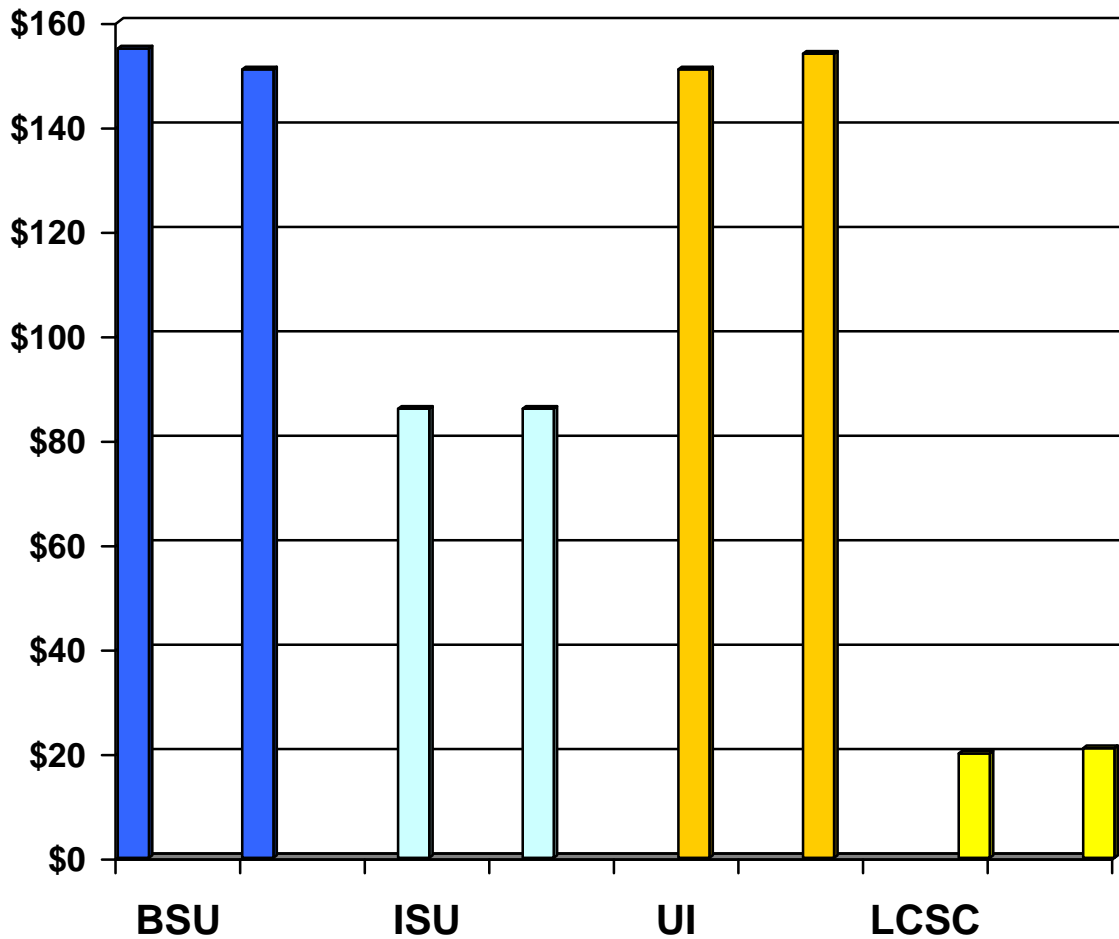
MOSSADAMS

Idaho Colleges and Universities

Presentation of Audit Results – cont.

November 10, 2020

Federal Expenditures By Institution 2020 vs 2019 (in millions)



MOSSADAMS

Idaho State University

Presentation of Audit Results

November 10, 2020

Primary Contacts at Moss Adams for ISU

Scott Simpson, Partner

5 auditors at ISU from Moss Adams
2 IT specialists

Fieldwork Dates

Interim Fieldwork (remote)	June 1 - 5
F/S Fieldwork (remote)	August 24 - 28

Audit Reporting and Timing

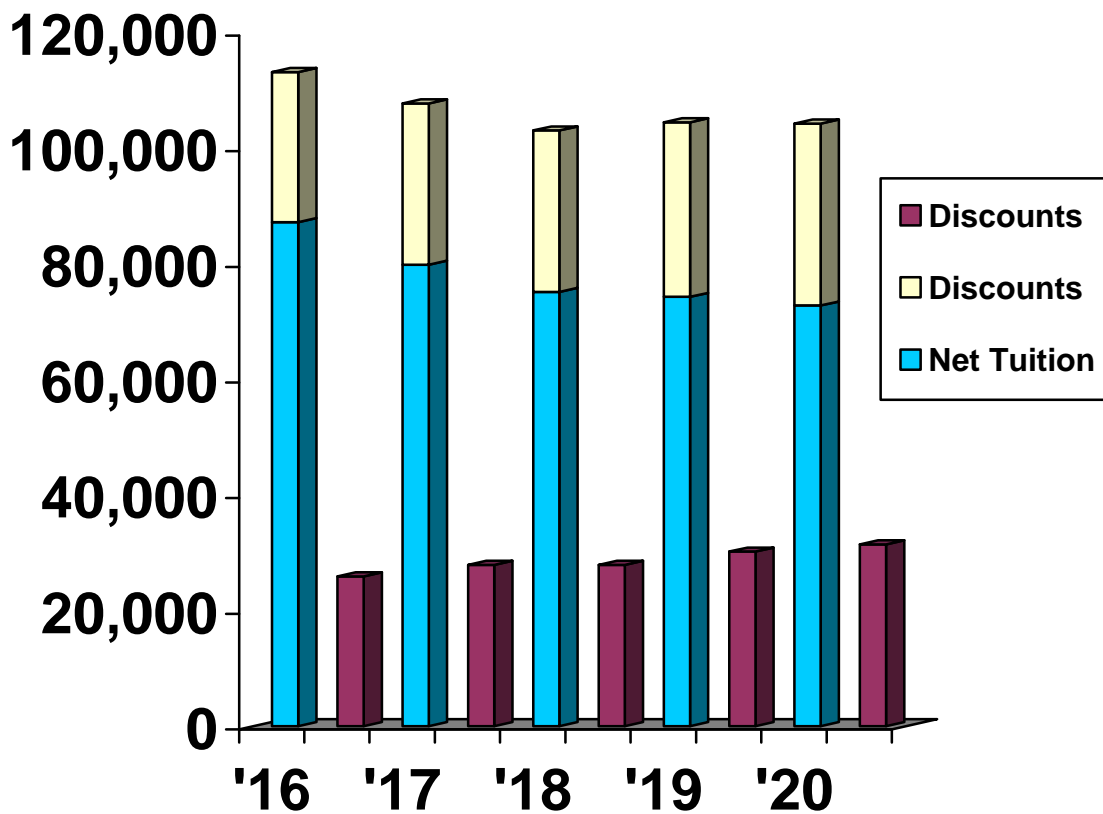
Audit Report Dated	September 25, 2020
Audit Report Issued	September 25, 2020
Auditors Report on Financial Statements	Unmodified
Internal Control Issues Identified & Reported	None Reported
Auditors Report on Compliance	TBD
Audit findings related to Compliance Audit	TBD

Note: OMB has not issued the Compliance Supplement Addendum as of 11/04/2020 which will contain the requirements for auditing compliance with 84.425E Higher Education Emergency Relief Fund (HEERF). OMB had indicated that they will issue the CS Addendum sometime this "Fall". Until guidance is issued, we can not complete the Compliance Audit.

Idaho State University
Presentation of Audit Results – cont.

November 10, 2020

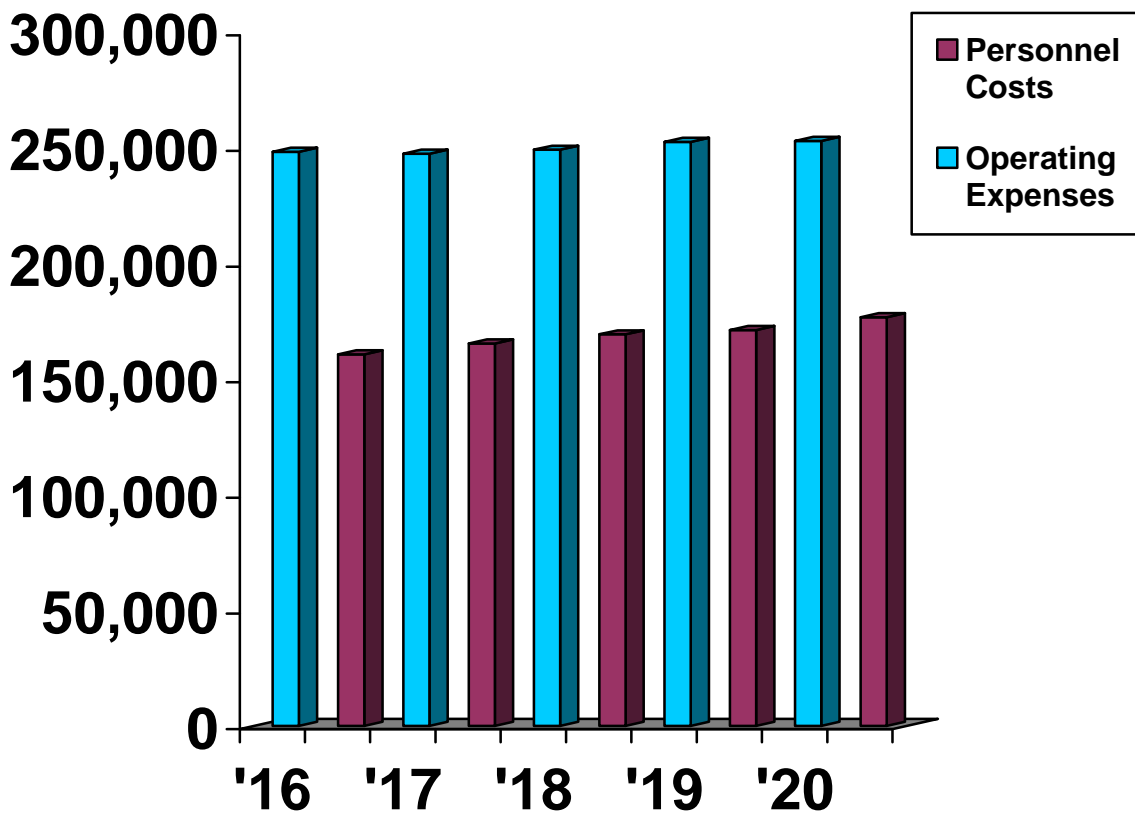
Tuition Revenues
5 Year Trend *(in thousands)*



Idaho State University
Presentation of Audit Results – cont.

November 10, 2020

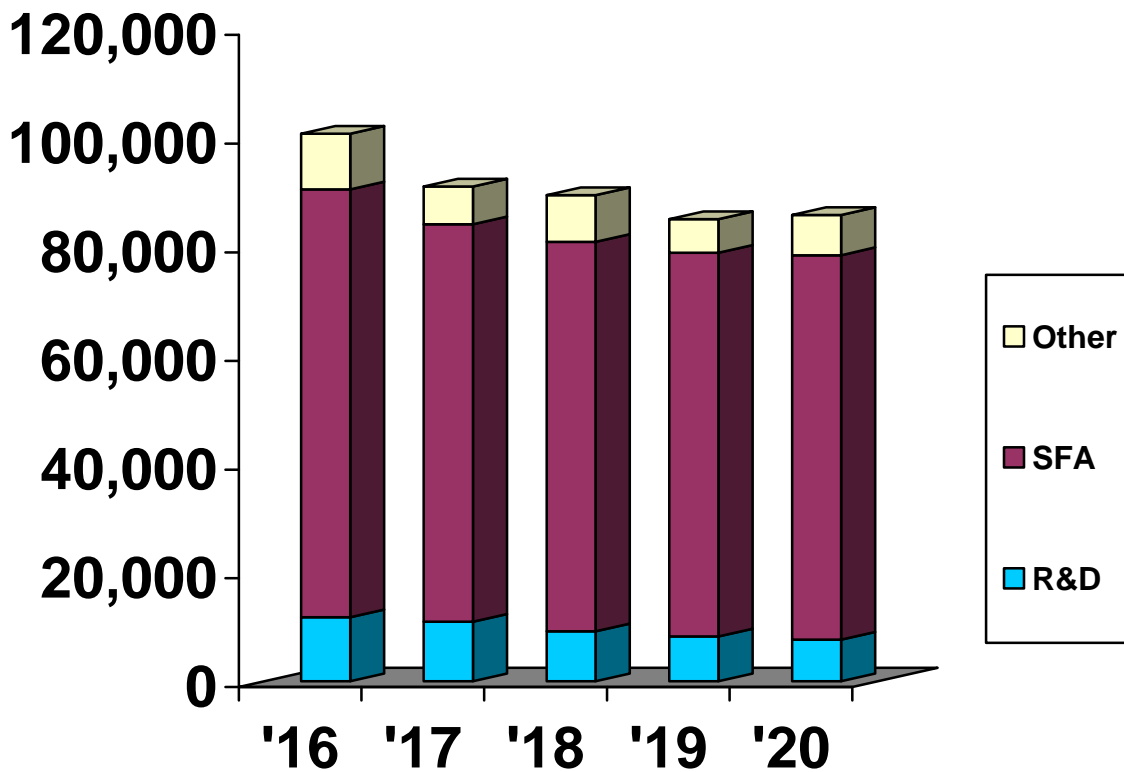
Expense Analysis
5 Year Trend *(in thousands)*



Idaho State University
Presentation of Audit Results – cont.

November 10, 2020

Federal Expenditures
5 Year Trend *(in thousands)*



MOSSADAMS

Boise State University

Presentation of Audit Results

November 10, 2020

Primary Contacts at Moss Adams for BSU

Pam Cleaver, Partner
Art Ngu, Senior Manager

5 auditors at BSU from Moss Adams
1 IT specialists

Fieldwork Dates

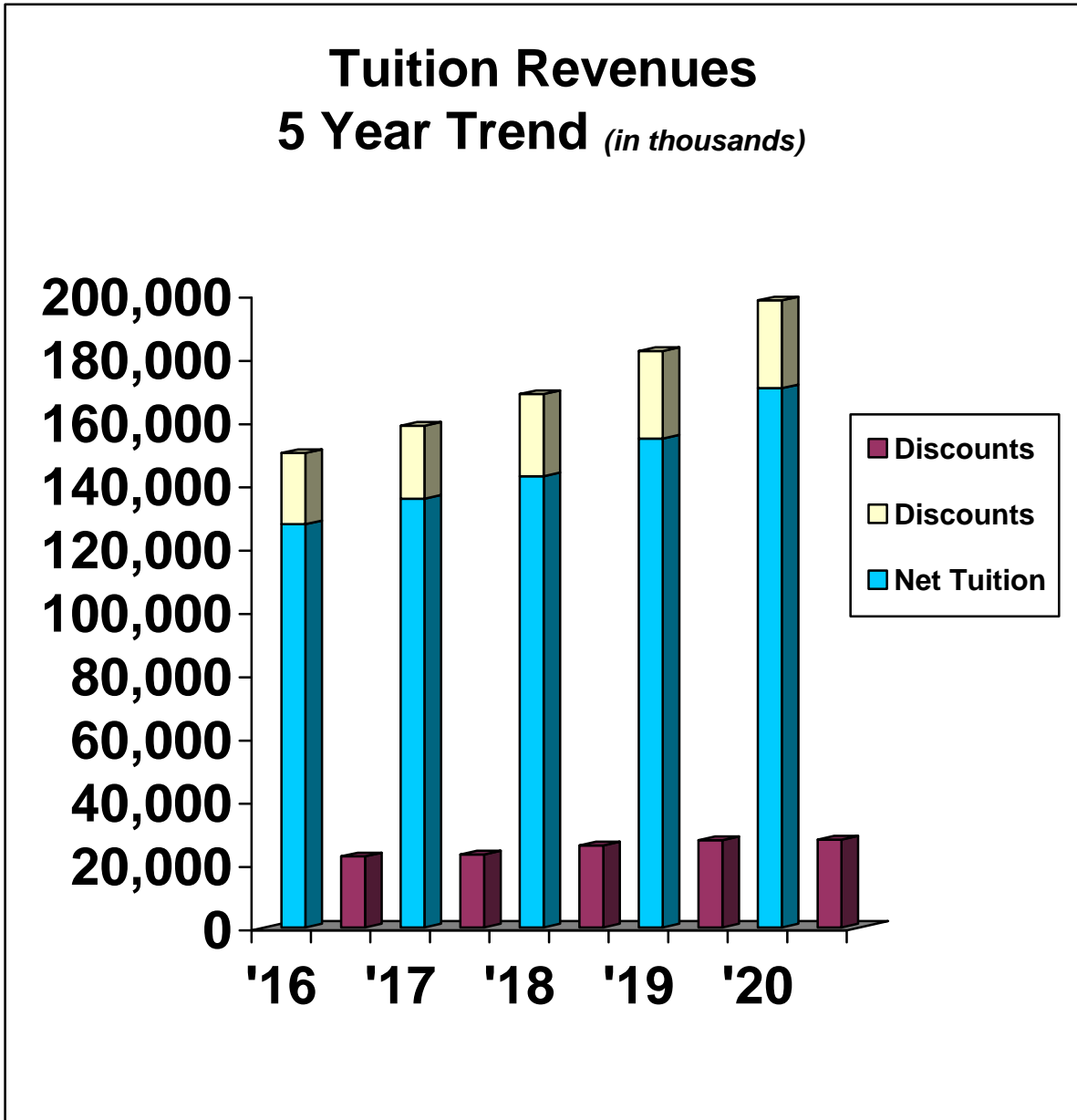
Interim Fieldwork	May 26 - 29
F/S Fieldwork	August 24 - 28

Audit Reporting and Timing

Audit Report Dated	October 9, 2020
Audit Report Issued	October 9, 2020
Auditors Report on Financial Statements	Unmodified
Internal Control Issues Identified & Reported	None Reported
Auditors Report on Compliance	TBD
Audit findings related to Compliance Audit	TBD

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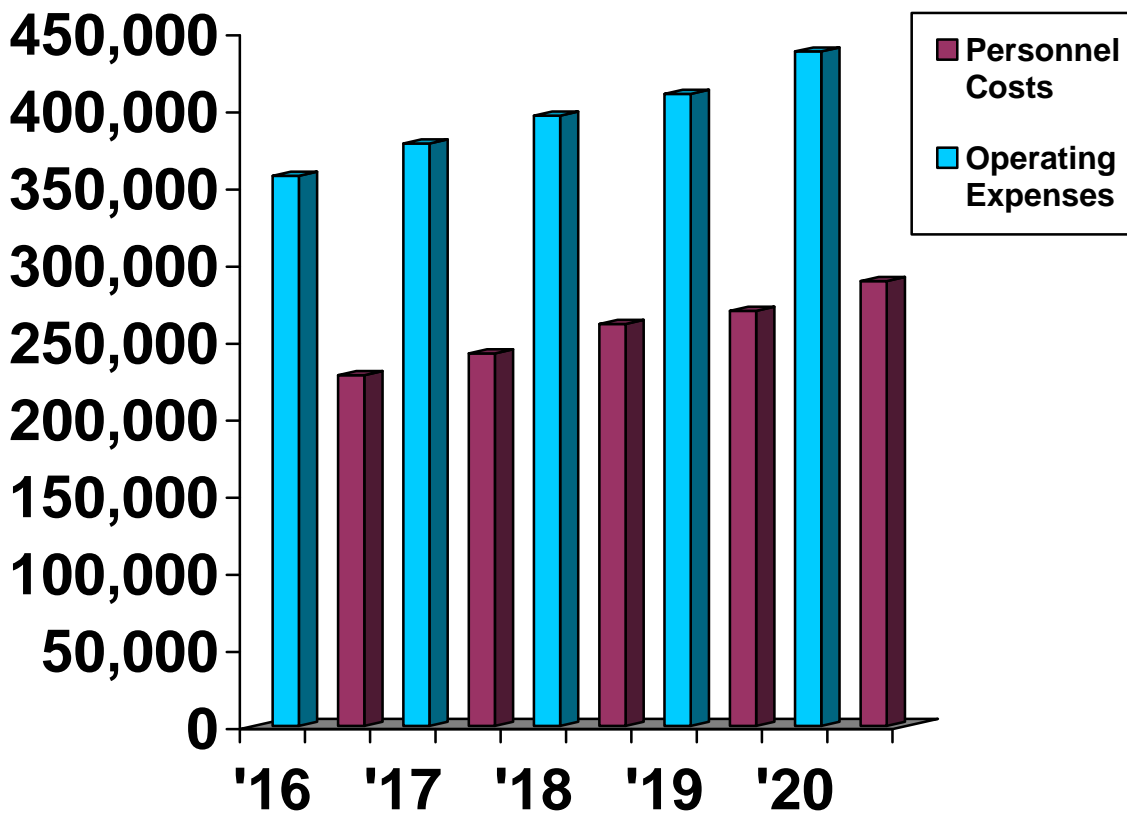
Boise State University
 Presentation of Audit Results – cont.
 November 10, 2020



Boise State University
Presentation of Audit Results – cont.

November 10, 2020

Expense Analysis
5 Year Trend *(in thousands)*

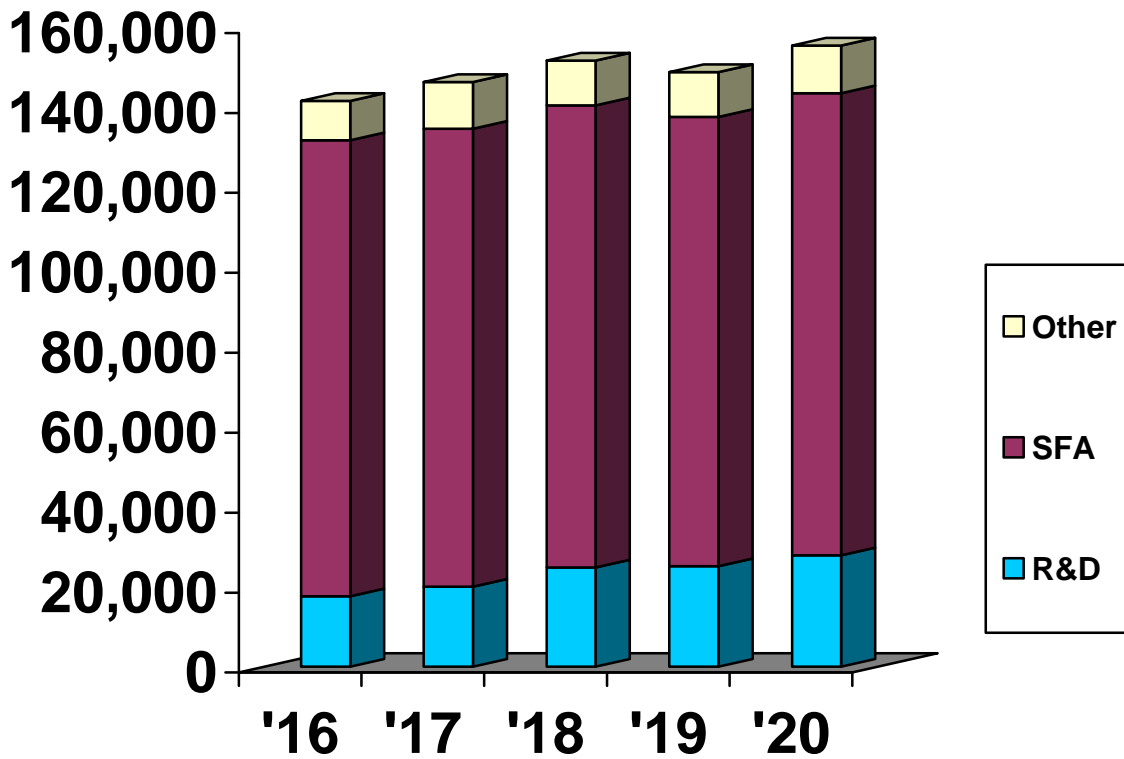


MOSSADAMS

Boise State University
Presentation of Audit Results – cont.

November 10, 2020

Federal Expenditures
5 Year Trend *(in thousands)*



MOSSADAMS

Lewis-Clark State College

Presentation of Audit Results

November 10, 2020

Primary Contacts at Moss Adams for LCSC

Tammy Erickson, Partner
Sasha Correnti, Manager

4 auditors at LCSC from Moss Adams
1 IT specialists

Fieldwork Dates

Interim Fieldwork	May 26 - 29
F/S Fieldwork	August 24 – 28

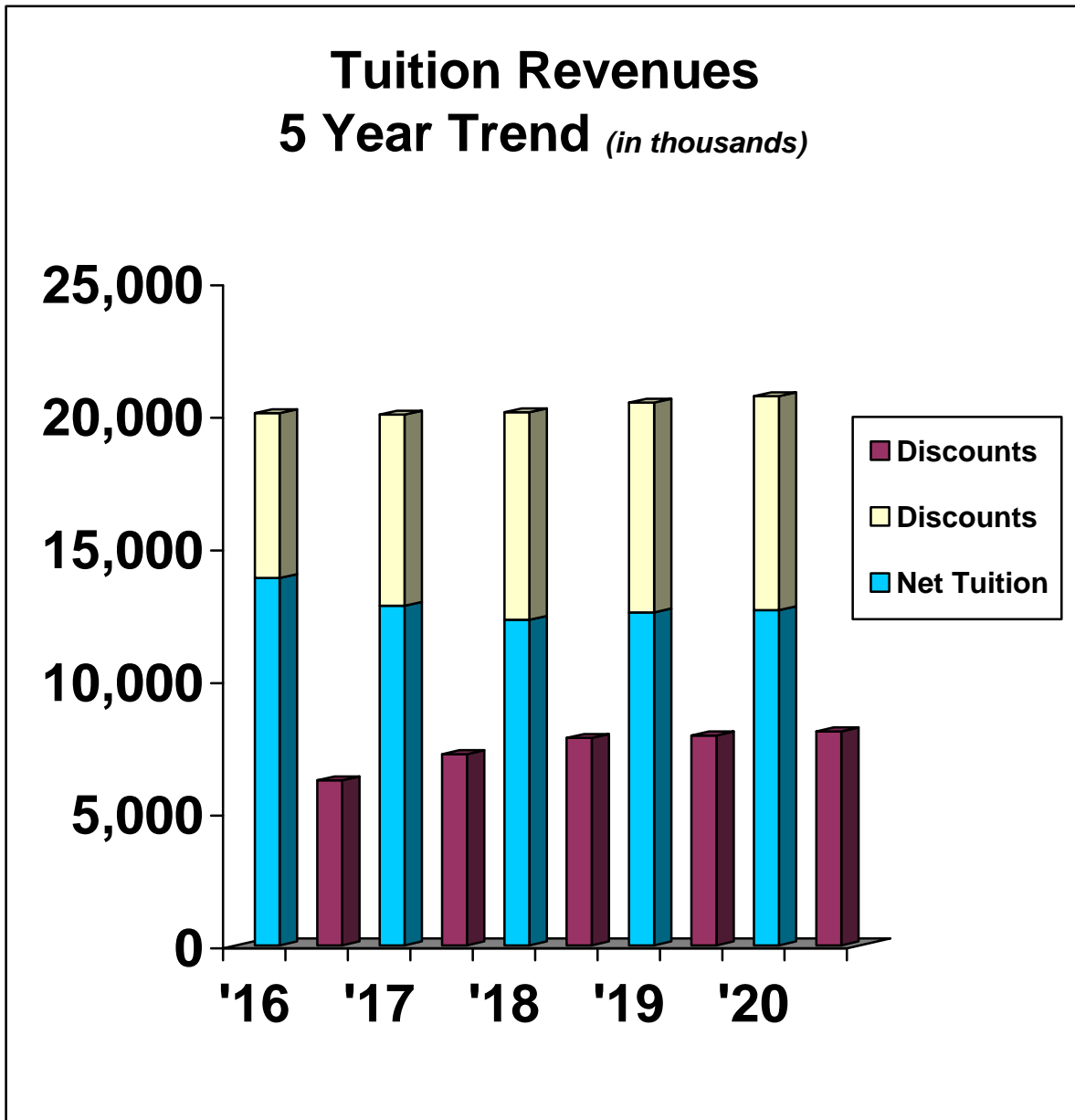
Audit Reporting and Timing

Audit Report Dated	September 24, 2020
Audit Report Issued	September 24, 2020
Auditors Report on Financial Statements	Unmodified
Internal Control Issues Identified & Reported	None Reported
Auditors Report on Compliance	TBD
Audit findings related to Compliance Audit	TBD

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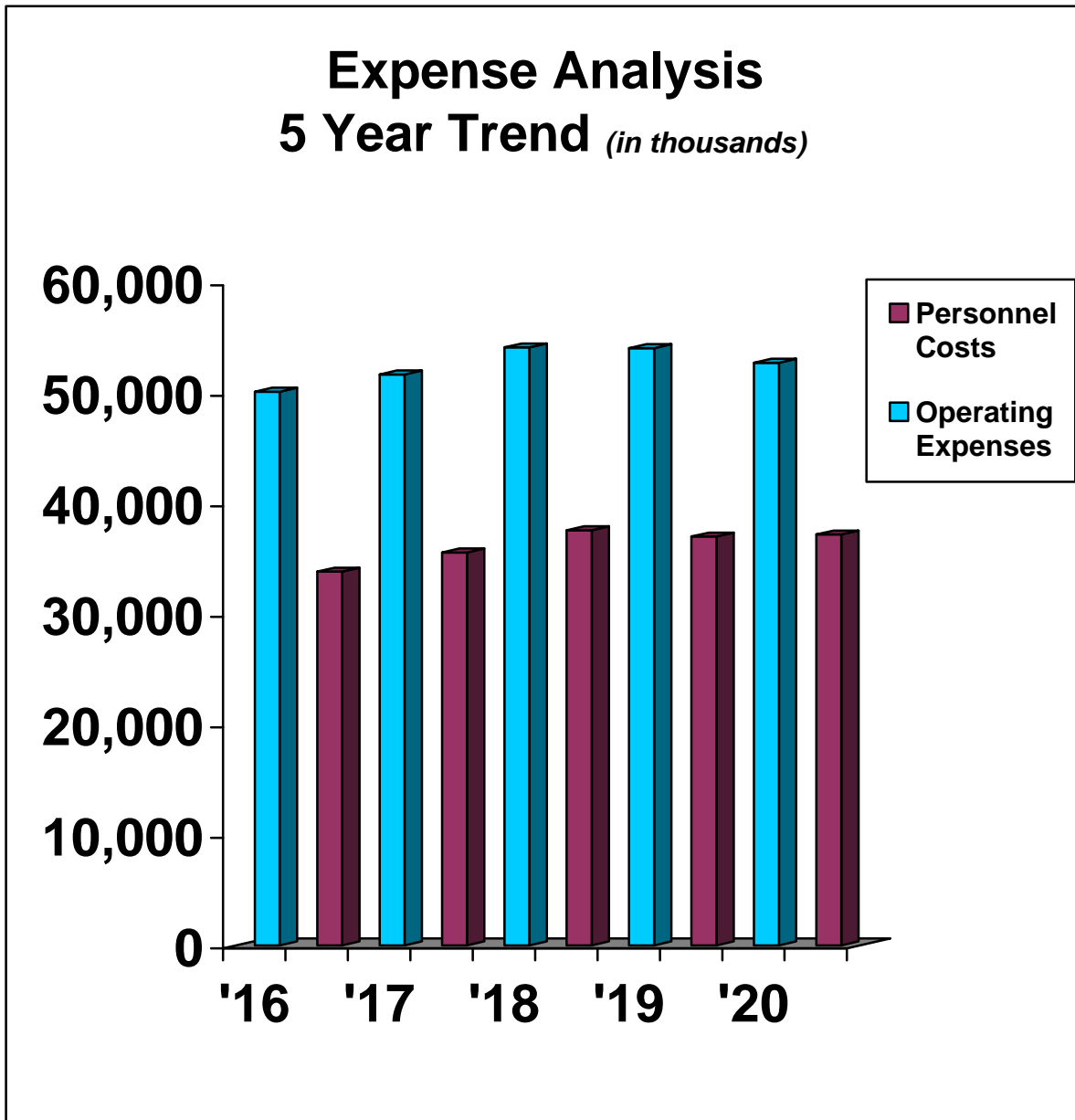
Lewis Clark State College
Presentation of Audit Results – cont.

November 10, 2020



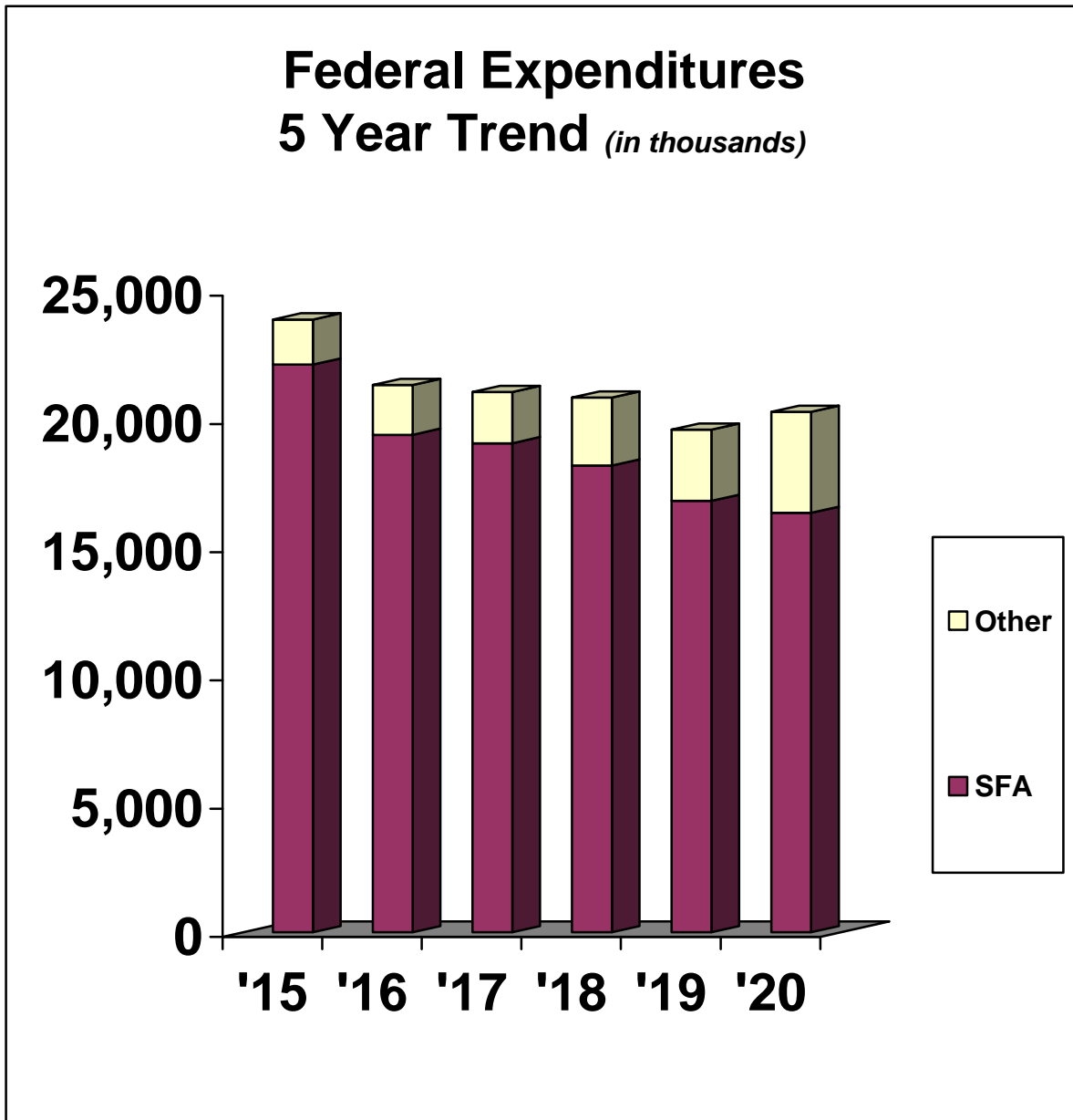
Lewis Clark State College
Presentation of Audit Results – cont.

November 10, 2020



Lewis-Clark State College
Presentation of Audit Results – cont.

November 10, 2020



University of Idaho

Presentation of Audit Results

November 10, 2020

Primary Contacts at Moss Adams for UI

Tammy Erickson, Partner

6 auditors at UI from Moss Adams
1 IT specialists

Fieldwork Dates

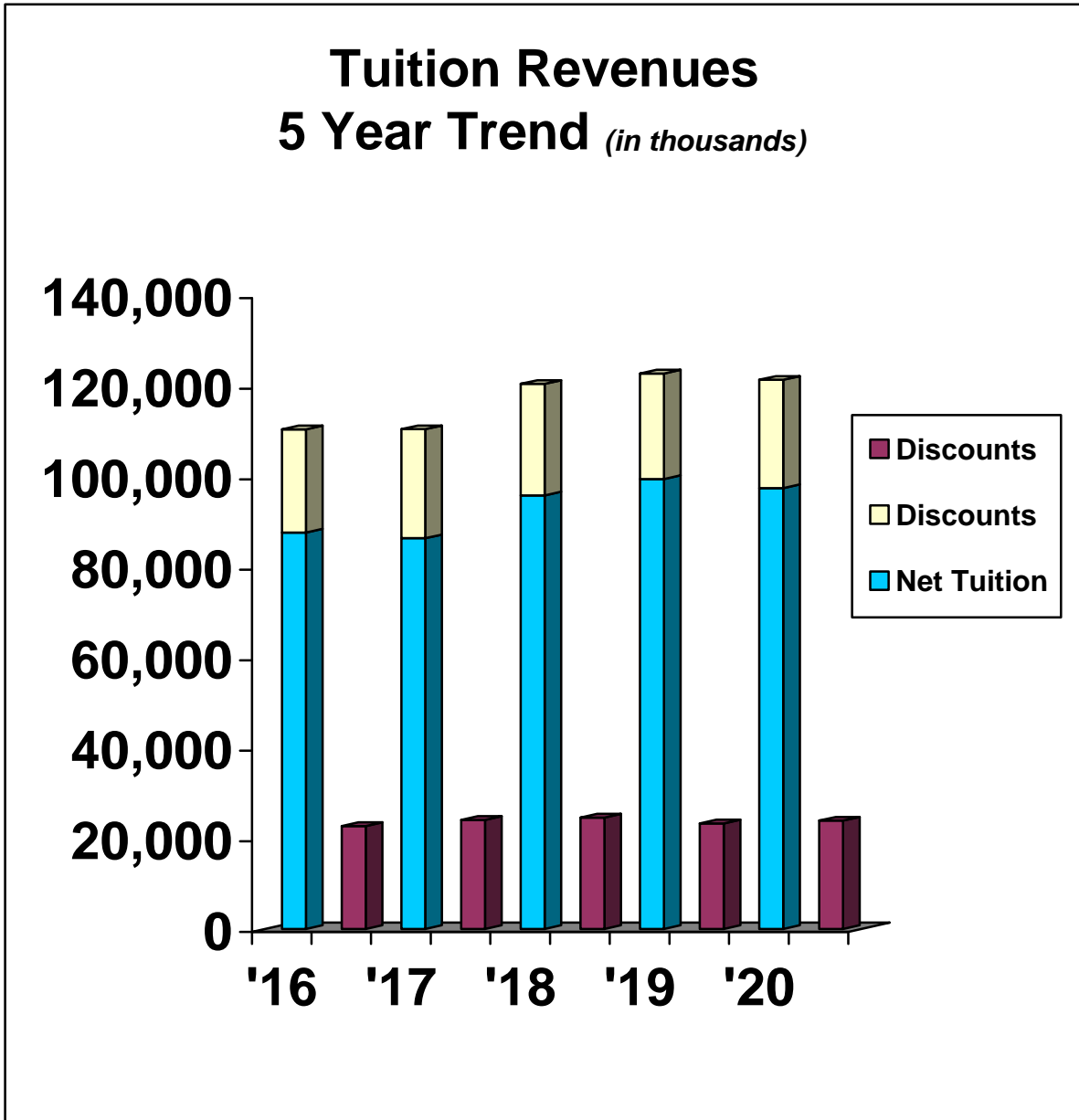
Interim Fieldwork	June 8 - 12
F/S Fieldwork	August 17 – 21

Audit Reporting and Timing

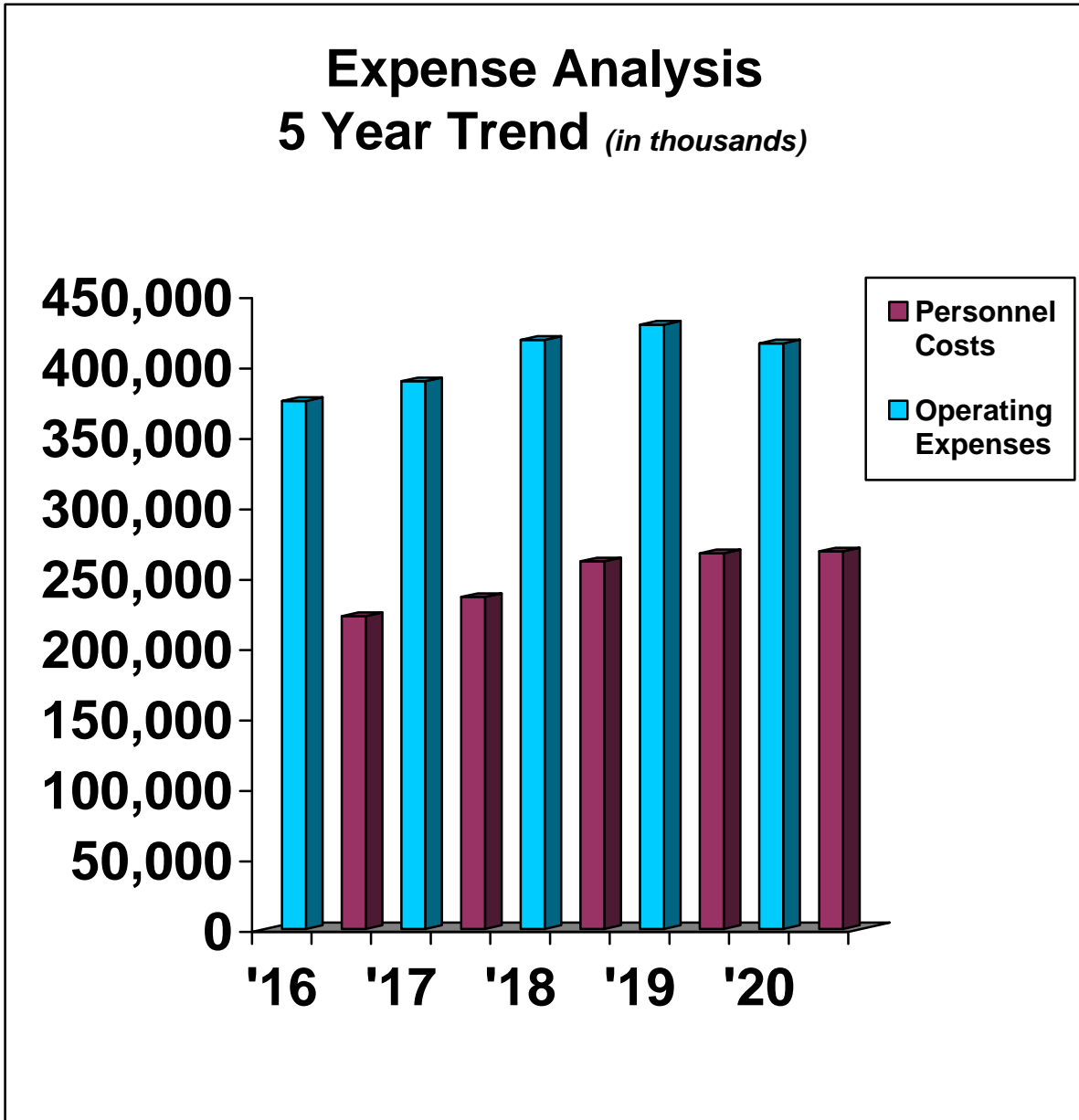
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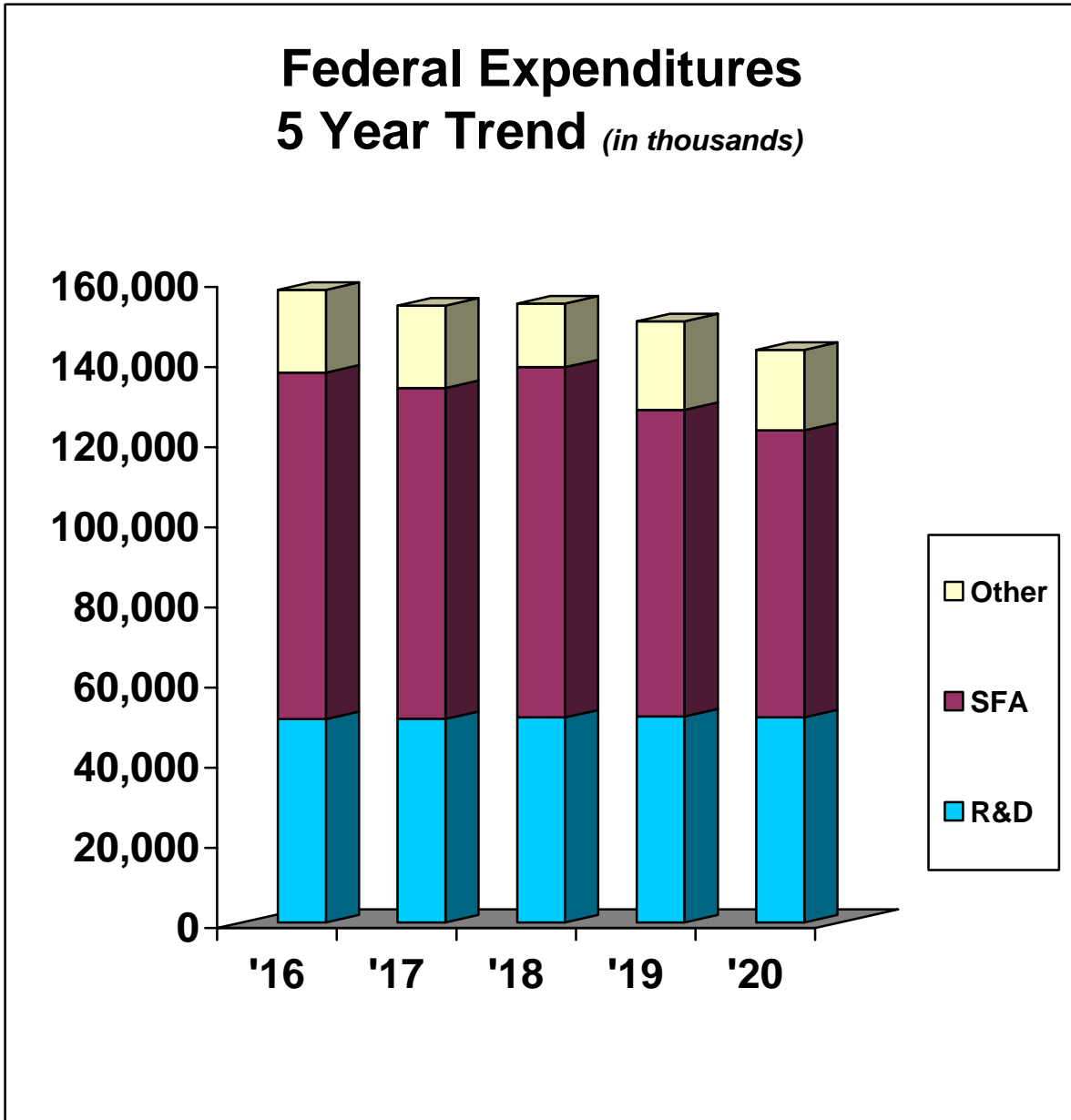
University of Idaho
Presentation of Audit Results – cont.
November 10, 2020



University of Idaho
Presentation of Audit Results – cont.
November 10, 2020



University of Idaho
Presentation of Audit Results – cont.
November 10, 2020



Idaho State Board of Education
Presentation of Audit Results – cont.

November 10, 2020

We are proud to be the auditor for Idaho Colleges and Universities and would like to extend our thanks to the Board Members, the Office of the State Board, and the Institutions.

Questions & Comments?

MOSS-ADAMS LLP

Section II - Financial Statement Findings

FINDING 2020-001 – Lack of Adequate Controls surrounding Financial Close and Reporting; Significant Deficiency in Internal Controls.

Criteria: Generally Accepted Accounting Principles (GAAP) require the University to have adequate controls in place over their financial close and reporting process to ensure the financial statements are materially correct.

Condition/Context: All overhead clearing account balances were not fully reconciled, creating additional entries necessary to correct the balance reported as of June 30, 2020. In addition, the University's financial statements required a reclassification between unrestricted net position and restricted-expendable net position to account for funds that had been expended for the intended purpose.

Cause: There was turnover at the University and there did not appear to be proper controls in place to ensure the balances were correct and properly reconciled.

Effect: Certain amounts were misstated, requiring audit adjustments to properly state the year end balances.

Recommendation: Although we have seen improvements in this area, we recommend the University conduct a thorough reconciliation and review of year-end supporting documentation to ensure the financial statements are complete and accurate. Proper internal controls ensure balances are reconciled and that no one person is responsible for preparing and processing a transaction or process from beginning to end and therefore preparers should not be in the position of relying on self-review as the primary mechanism to identify mistakes.

Views of responsible officials:

**AUDIT
DECEMBER 17, 2020**

SUBJECT

FY 2020 College and Universities' Financial Ratios

REFERENCE

December 2011-2020

Annual Audit reports submitted to the Board

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

The ratios presented measure the financial health of each institution and include a "Composite Financial Index" based on four key ratios. The ratios are designed as management tools to measure financial activity and key trends within an institution over time. They typically do not lend themselves to comparative analysis between institutions because of the varying missions and structures of the institutions and current strategic initiatives underway at a given institution at a given time.

Institution foundations are reported as component units in the college and universities' financial statements. The nationally-developed ratio benchmarks model is built around this combined picture.¹ An institution's foundation holds assets for the purpose of supporting the institution. Foundation assets are nearly all restricted for institution purposes and are an important part of an institution's financial strategy and financial health.

Ratio	Measure	Benchmark
Primary reserve	Sufficiency of resources and their flexibility; good measure for net assets	.40
Viability	Capacity to repay total debt through reserves	1.25
Return on net position	Whether the institution is better off financially this year than last	6.00%
Net operating revenues	Whether the institution is living within available resources	2.00%
Composite Financial Index	Combines four ratios using weighting	3.0
Debt Burden	Institution's dependence on borrowed funds	<= 8%
Debt Coverage	Ability of excess income over adjusted expenses to cover annual debt service payments.	2.0
Life of Capital Assets	Recent vs deferred investments	10 - 14

¹ See *Strategic Financial Analysis for Higher Education: Identifying, Measuring & Reporting Financial Risks* (7th ed.). New York, NY: Prager, Sealy & Co., LLC; KPMG, LLP; Attain, LLC. The model's analysis developed by industry experts is generally accepted in the field of higher education and has been around and evolving since 1980.

AUDIT
DECEMBER 17, 2020

Three other ratios provided are the Debt Burden, Debt Coverage and Life of Capital Assets. The Debt Burden ratio is calculated as debt service divided by adjusted expenditure. The benchmark for this ratio is set by the institution for no more than 8% per Board policy V.F. The Debt Coverage ratio is calculated as adjusted revenues divided by debt service. The benchmark for this ratio is set at 2. The Life of Capital Assets ratio is calculated as accumulated depreciation divided by depreciation expense. The benchmark for this ratio is 10 for research institutions and 14 for undergraduate liberal arts institutions.

IMPACT

These financial ratios and analyses are provided for the Board to review the financial health and year-to-year trends at the institutions. The ratios reflect a financial snapshot as of fiscal year end. The Audit Committee reviews key financial performance factors on a quarterly basis.

ATTACHMENTS

- Attachment 1 - Boise State University – CFI Ratios
- Attachment 2 - Boise State University - Debt Ratios
- Attachment 3 - Idaho State University – CFI Ratios
- Attachment 4 - Idaho State University – Debt Ratios
- Attachment 5 - University of Idaho – CFI Ratios
- Attachment 6 - University of Idaho – Debt Ratios
- Attachment 7 - Lewis-Clark State College – CFI Ratios
- Attachment 8 - Lewis-Clark State College – Debt Ratios

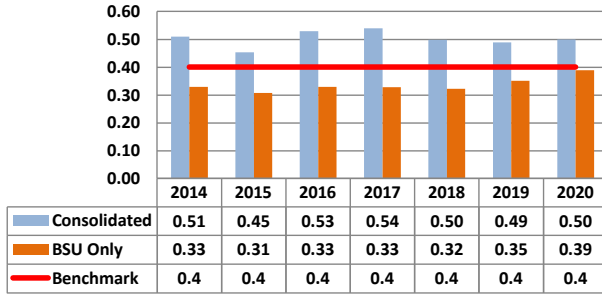
STAFF COMMENTS AND RECOMMENDATIONS

Institution representatives will be ready to provide a brief analysis of their financial ratios and answer Board members' questions.

BOARD ACTION

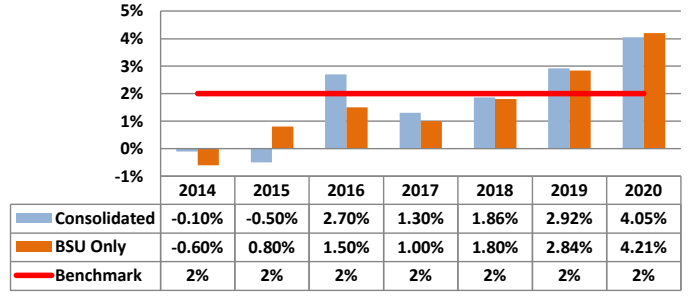
This item is for informational purposes only.

Boise State University Primary Reserve



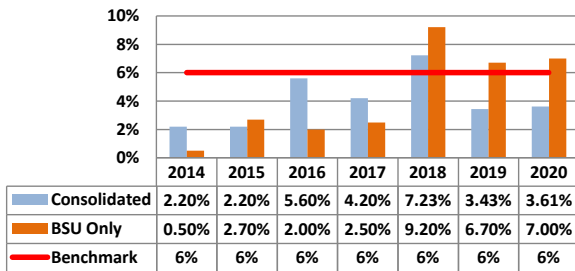
.40 indicates 5 months of operations can be covered by expendable reserves. Trend indicates whether institution has increased net worth in proportion to rate of growth in its operating size.

Boise State University Net Operating Revenues



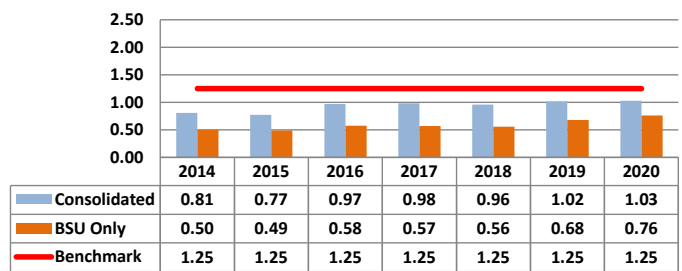
Indicates whether institution is adding or subtracting from net assets. A pattern of deficits is a warning signal that management should focus on restructuring income and expense streams to return to an acceptable level.

Boise State University Return on Net Position



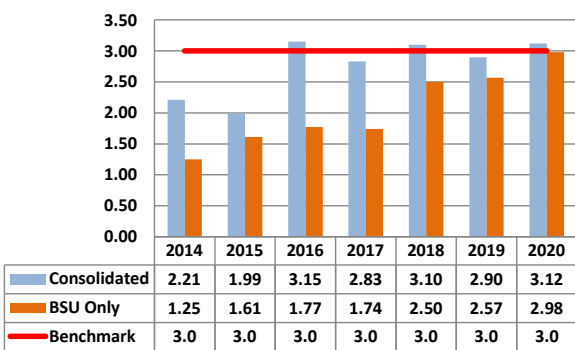
Measures total economic return: higher is better. Lower is okay if it reflects the strategy and mission in setting up for future returns.

Boise State University Viability

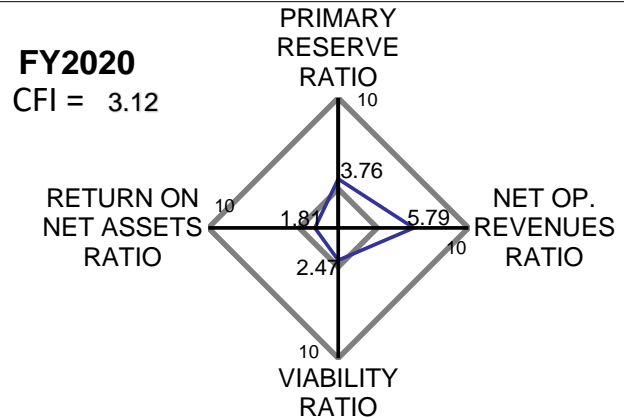


Measures ability to meet entire debt obligation with expendable net assets as of a balance sheet date.

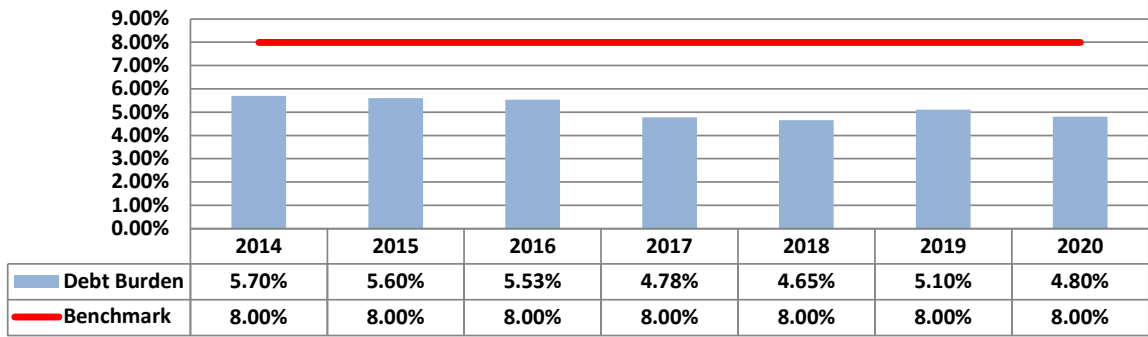
BSU Consolidated Financial Index



Indicates overall financial health. Ratio range of 3-5 is ideal time to direct resources toward transformation.

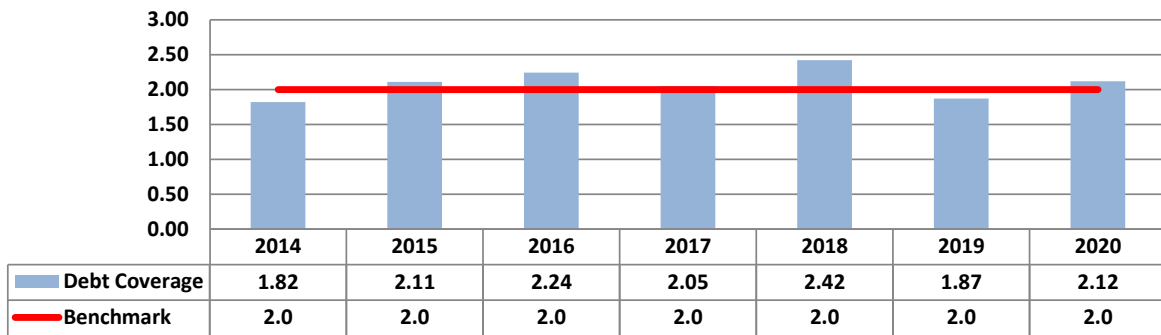


Boise State University Debt Burden Ratio



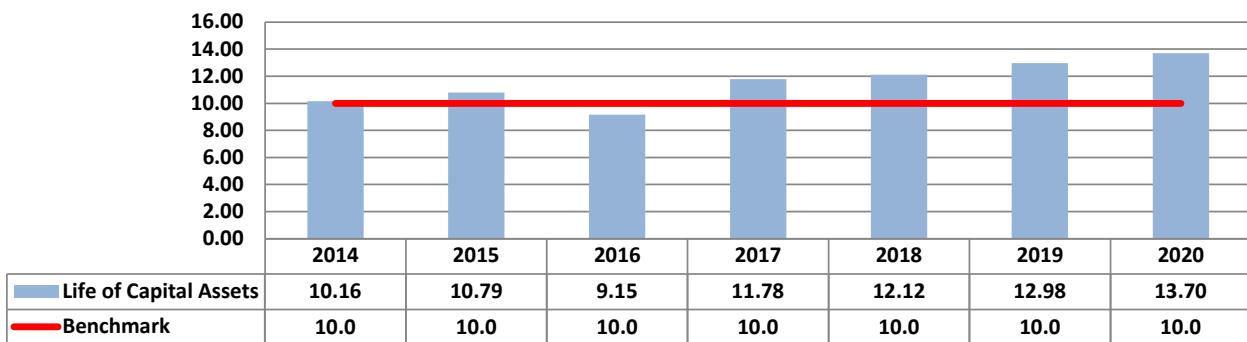
Reflects reliance on borrowed funds as a source of funds.

Boise State University Debt Coverage Ratio



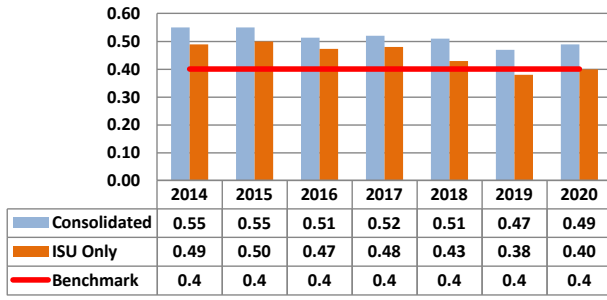
Reflects ability of excess income over adjusted expenses to cover annual debt service payments.

Boise State University Life of Capital Assets



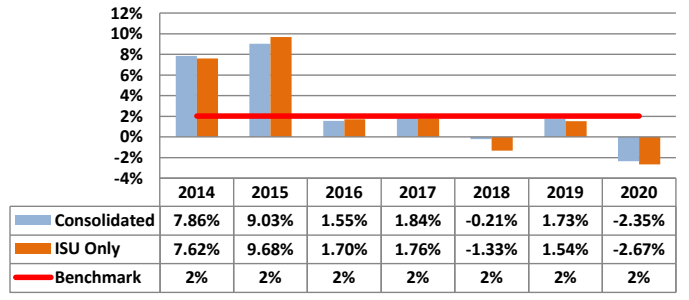
Higher ratio indicates more deferred reinvestment in plant facilities in the future.

Idaho State University Primary Reserve



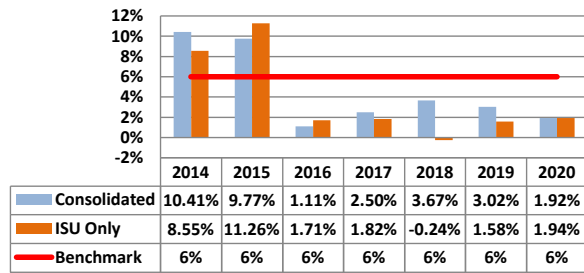
.40 indicates 5 months of operations can be covered by expendable reserves. Trend indicates whether institution has increased net worth in proportion to rate of growth in its operating size.

Idaho State University Net Operating Revenues



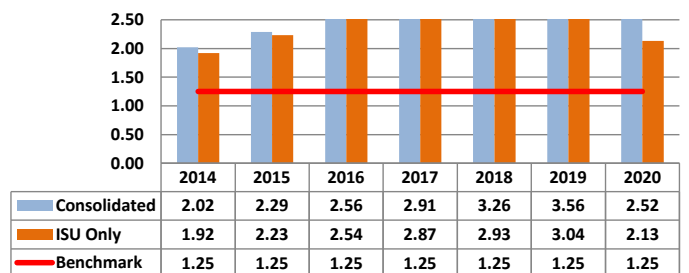
Indicates whether institution is adding or subtracting from net assets. A pattern of deficits is a warning signal that management should focus on restructuring income and expense streams to return to an acceptable level.

Idaho State University Return on Net Position



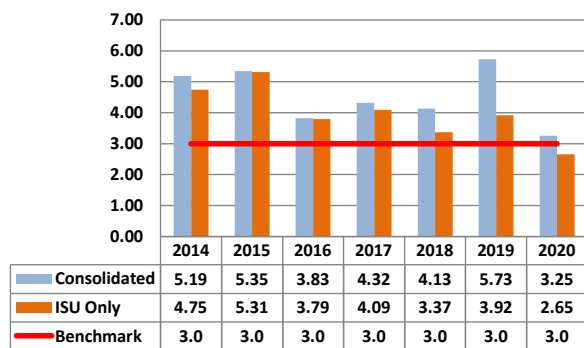
Measures total economic return: higher is better. Lower is okay if it reflects the strategy and mission in setting up for future returns.

Idaho State University Viability



Measures ability to meet entire debt obligation with expendable net assets as of a balance sheet date.

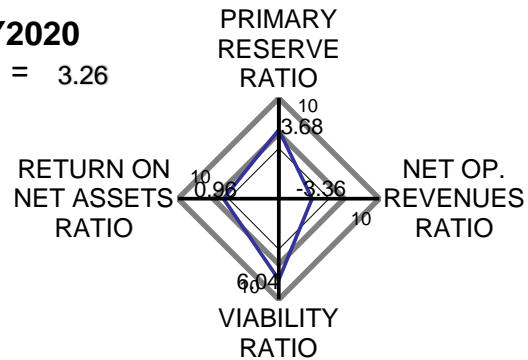
ISU Consolidated Financial Index



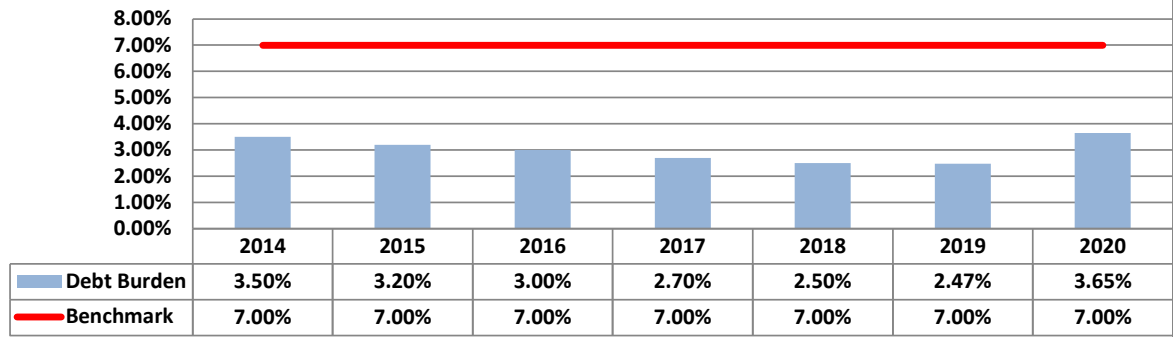
Indicates overall financial health. Ratio range of 3-5 is ideal time to direct resources toward transformation.

FY2020

CFI = 3.26

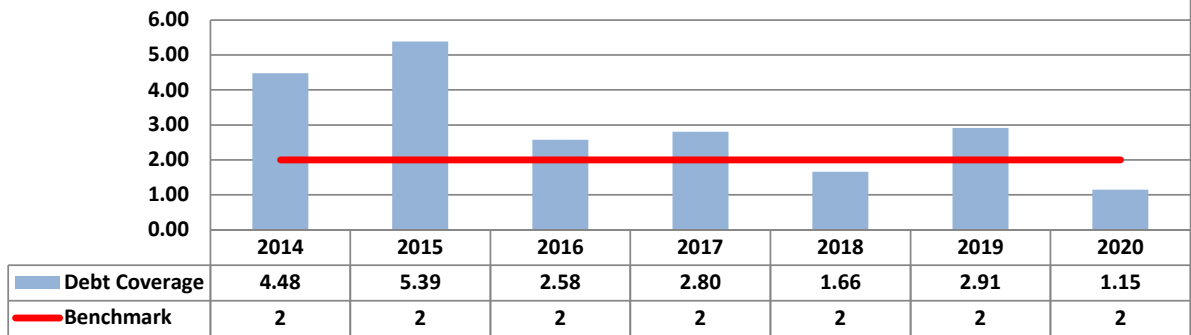


Idaho State University Debt Burden Ratio



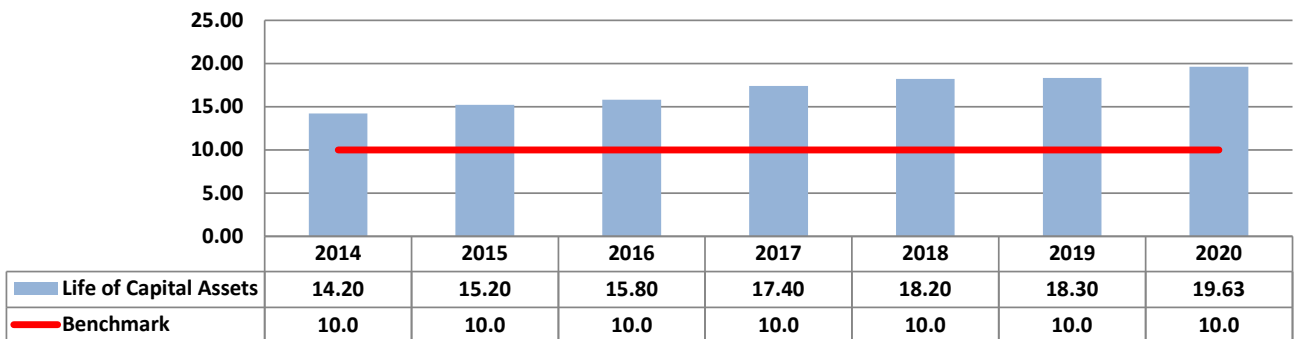
Reflects reliance on borrowed funds as a source of funds.

Idaho State University Debt Coverage Ratio



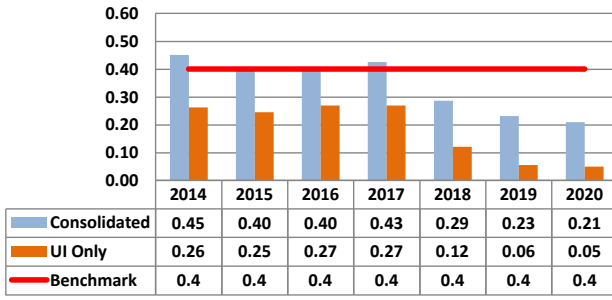
Reflects ability of excess income over adjusted expenses to cover annual debt service payments.

Idaho State University Life of Capital Assets



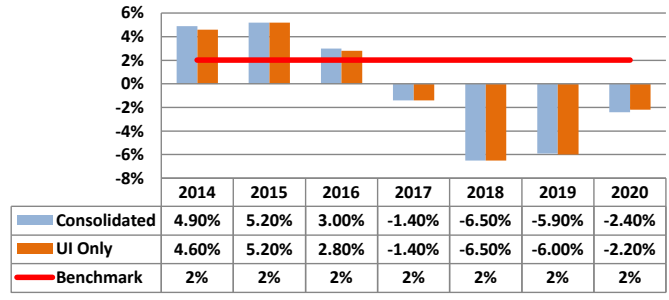
Higher ratio indicates more deferred reinvestment in plant facilities in the future.

University of Idaho Primary Reserve



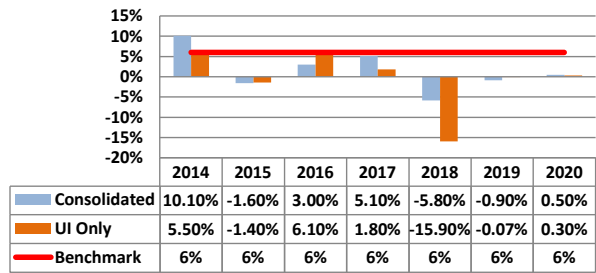
.40 indicates 5 months of operations can be covered by expendable reserves. Trend indicates whether institution has increased net worth in proportion to rate of growth in its operating size.

University of Idaho Net Operating Revenues



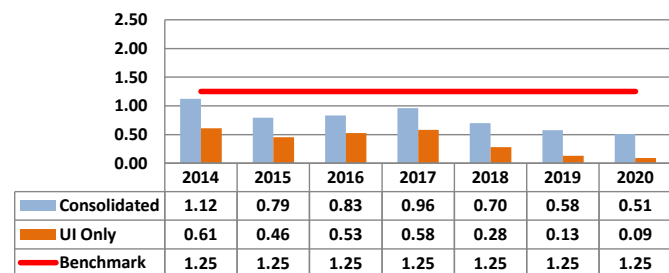
Indicates whether institution is adding or subtracting from net assets. A pattern of deficits is a warning signal that management should focus on restructuring income and expense streams to return to an acceptable level.

University of Idaho Return on Net Position



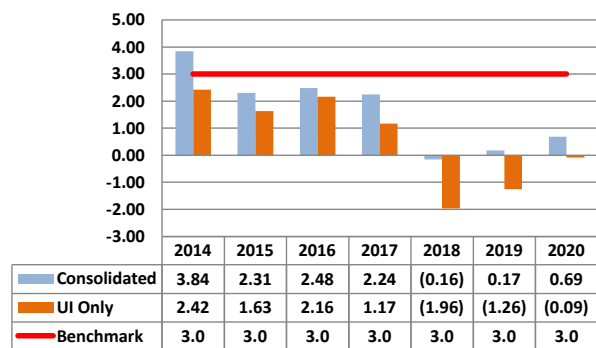
Measures total economic return: higher is better. Lower is okay if it reflects the strategy and mission in setting up for future returns.

University of Idaho Viability



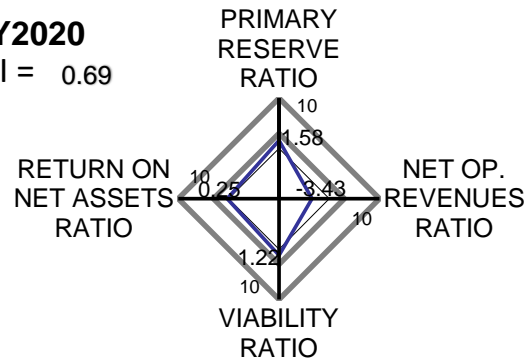
Measures ability to meet entire debt obligation with expendable net assets as of a balance sheet date.

UI Consolidated Financial Index

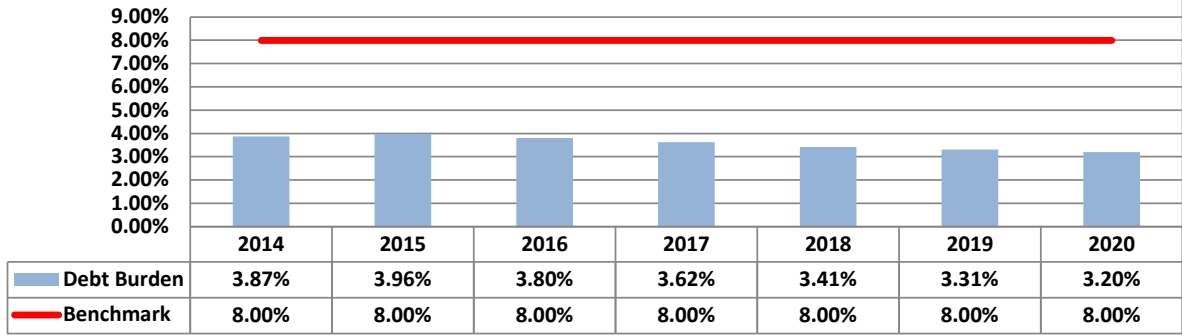


Indicates overall financial health. Ratio range of 3-5 is ideal time to direct resources toward transformation.

FY2020
CFI = 0.69

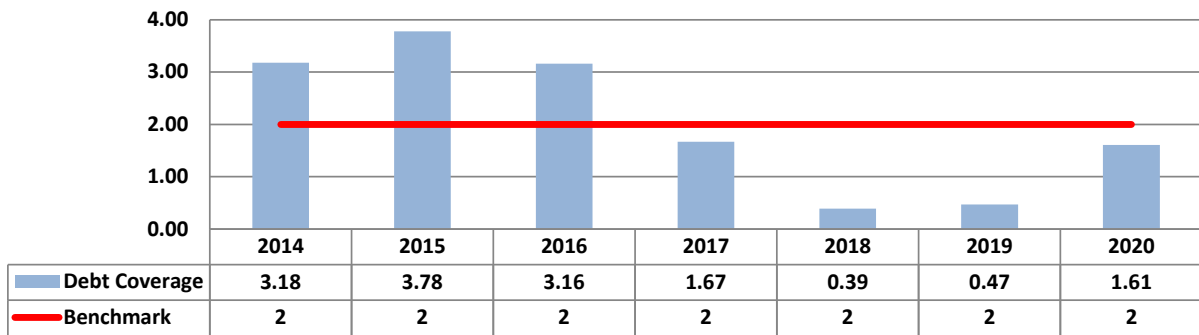


University of Idaho Debt Burden Ratio



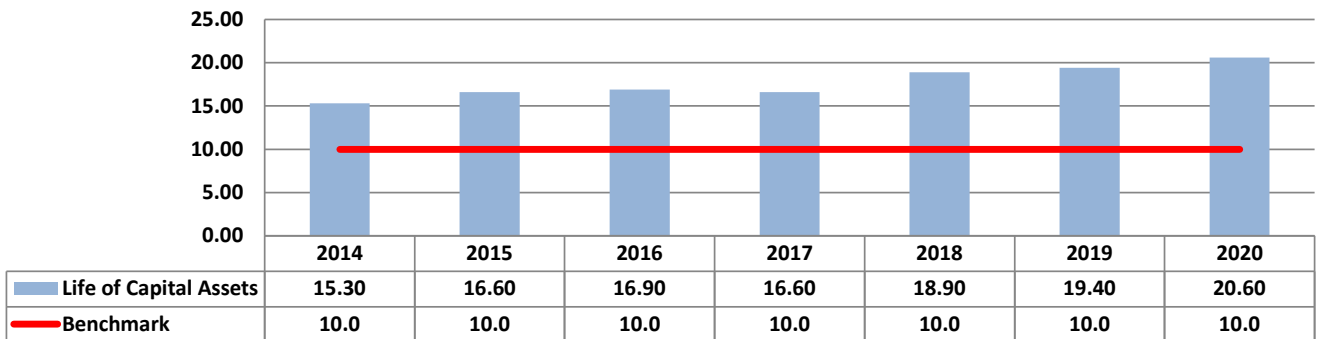
Reflects reliance on borrowed funds as a source of funds.

University of Idaho Debt Coverage Ratio



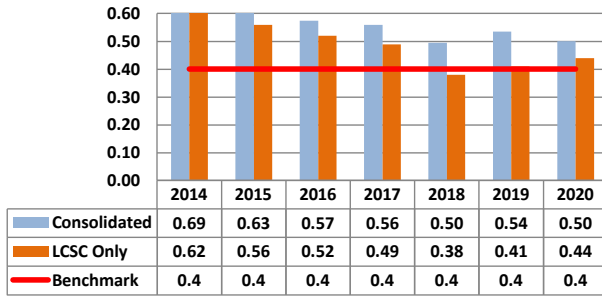
Reflects ability of excess income over adjusted expenses to cover annual debt service payments.

University of Idaho Life of Capital Assets



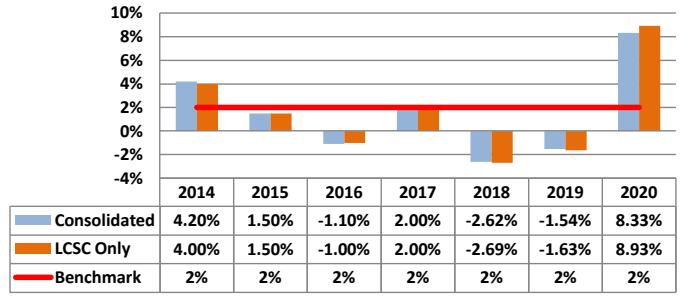
Higher ratio indicates more deferred reinvestment in plant facilities in the future.

Lewis-Clark State College Primary Reserve



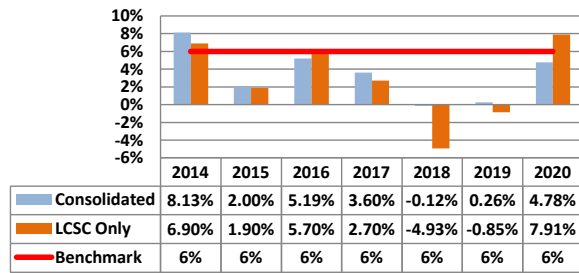
.40 indicates 5 months of operations can be covered by expendable reserves. Trend indicates whether institution has increased net worth in proportion to rate of growth in its operating size.

Lewis-Clark State College Net Operating Revenues



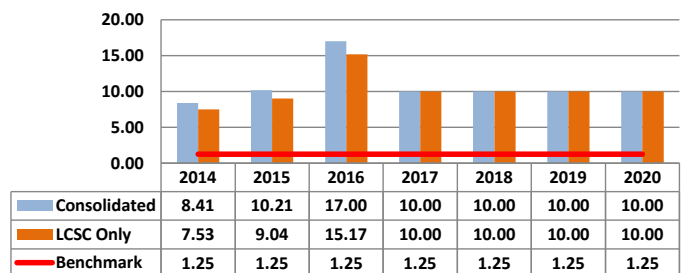
Indicates whether institution is adding or subtracting from net assets. A pattern of deficits is a warning signal that management should focus on restructuring income and expense streams to return to an acceptable level.

Lewis-Clark State College Return on Net Position



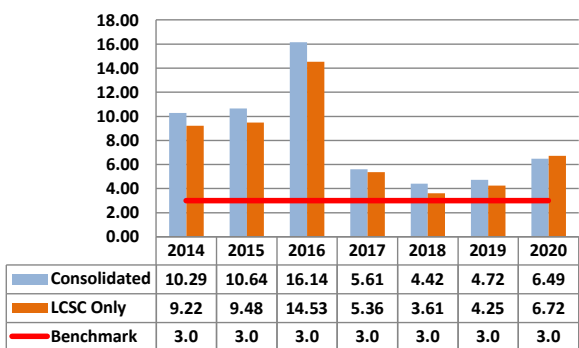
Measures total economic return: higher is better. Lower is okay if it reflects the strategy and mission in setting up for future returns.

Lewis-Clark State College Viability



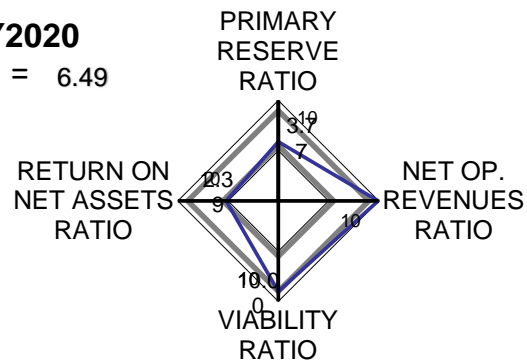
Measures ability to meet entire debt obligation with expendable net assets as of a balance sheet date.

LCSC Consolidated Financial Index

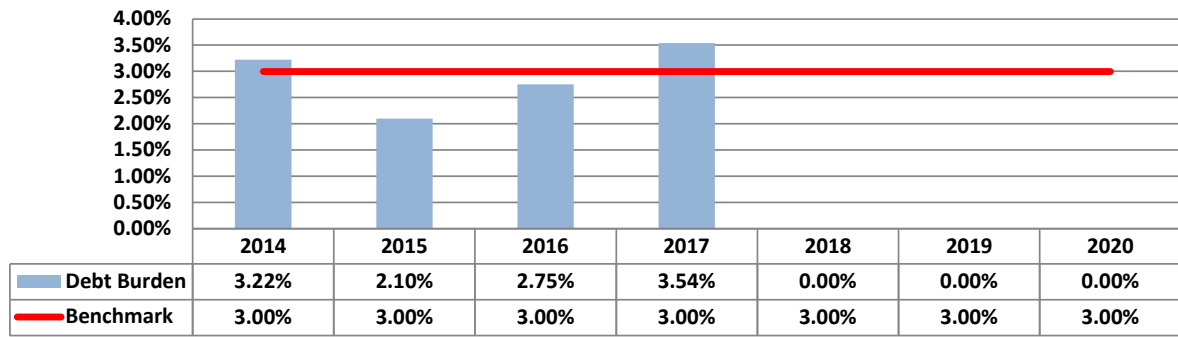


Indicates overall financial health. Ratio range of 3-5 is ideal time to direct resources toward transformation.

FY2020
CFI = 6.49

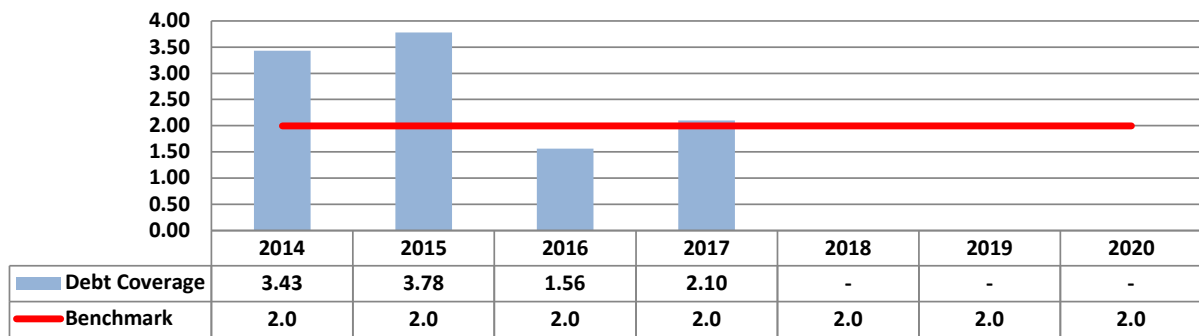


Lewis-Clark State College Debt Burden Ratio



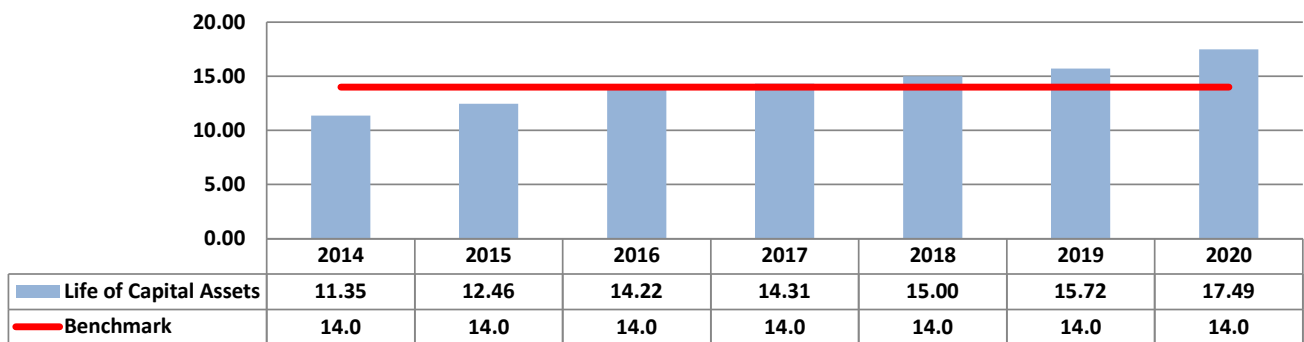
Reflects reliance on borrowed funds as a source of funds.

Lewis-Clark State College Debt Coverage Ratio



Reflects ability of excess income over adjusted expenses to cover annual debt service payments.

Lewis-Clark State College Life of Capital Assets



Higher ratio indicates more deferred reinvestment in plant facilities in the future.

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SUBJECT

FY 2020 College and Universities' Unrestricted Net Position Balances

REFERENCE

December 2012 - 2020 Annual Audit reports submitted to the Board

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Net position balances provide a tool to gauge the amount and types of assets held by an institution. An analysis of unrestricted expendable assets provides insights into some of the "reserves" which might be available in order for an institution to meet emergency needs. The net position balances as of June 30, 2020 for Boise State University, Idaho State University, the University of Idaho, and Lewis-Clark State College are attached. The net position reports for the four institutions are broken out by the following categories:

Invested in capital assets, net of related debt: This represents an institution's total investment in capital assets, net of accumulated depreciation and outstanding debt obligations related to those capital assets. To the extent debt has been incurred but not yet expended for capital assets, such amounts are not included.

Restricted, expendable: This represents resources which an institution is legally or contractually obligated to spend in accordance with restrictions imposed by external third parties.

Restricted, nonexpendable: This represents endowment and similar type funds in which donors or other outside sources have stipulated, as a condition of the gift instrument, that the principal is to be maintained inviolate and in perpetuity, and invested for the purpose of producing present and future income, which may either be expended or added to principal.

Unrestricted: This represents resources derived from student tuition and fees, and sales and services of educational departments and auxiliary enterprises. Auxiliary enterprises are defined as substantially self-supporting activities that provide services for students, faculty and staff. Not all sources of revenue noted above are necessarily present in the unrestricted position.

Within the category of **Unrestricted Position**, the institutions reserve funds for the following:

Obligated: Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for

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outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which contractual commitments exist.

Designated: Designated net position represents balances not yet legally contracted but which have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative cost recovery returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

Note: Designated reserves are not yet legally contracted, so technically they are still subject to management decision or reprioritization. However, it's critical to understand that these net position balances are a snapshot in time as of June 30, 2020, so reserves shown as "designated" on this report could become "obligated" at any point in the current fiscal year.

Unrestricted Funds Available: Balance represents reserves available to bridge uneven cash flows as well as future potential funding shortfalls such as:

- Budget reductions or holdbacks
- Enrollment fluctuations
- Unfunded enrollment workload adjustment (EWA)
- Unfunded occupancy costs
- Critical infrastructure failures

IMPACT

The volatility of state funding as well as fluctuations in enrollment and tuition revenue necessitates that institutions maintain fund balances sufficient to stabilize their operating budgets. As such, Board Policy V.B. sets a minimum target reserve of 5%, as measured by "Unrestricted Available" funds divided by annual operating expenses. The institutions' unrestricted funds available as a percent of operating expenses over the past five fiscal years are as follows:

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
BSU:	5.3%	5.5%	3.8%	5.1%	.6%
ISU:	11.8%	7.8%	5.7%	5.2%	8.8%
UI:	5.4%	5.0%	(1.6%)	(7.9%)	(7.2%)
LCSC:	6.0%	5.2%	5.1%	1.6%	6.9%

ATTACHMENTS

- Attachment 1 - BSU Net Position Balances
- Attachment 2 - ISU Net Position Balances
- Attachment 3 - UI Net Position Balances
- Attachment 4 - LCSC Net Position Balances

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STAFF COMMENTS AND RECOMMENDATIONS

Idaho State University and Lewis-Clark State College met the Board's 5% reserve target in FY20.

Boise State University's Unrestricted Net Position report reflects the impact of Covid-19 on the University. Reserves totaling \$25.5 million are expected to be consumed due to lost net revenues and additional expenses. Without this impact, the University would have met the Board's 5% reserve requirement.

University of Idaho has reported a negative \$30.0 million for its "Unrestricted – Available" net position, which results in a negative ratio of 7.2% unrestricted available net position to FY20 operating expenses. The University ended FY20 with a positive change in aggregate net position of \$901,123 and an increase in unrestricted net position of \$4.1 million due to focused reductions in expenditures. Further permanent base budget reductions have been implemented in FY21 with the expectation of continued improvements in net position.

Representatives from the institutions are ready to provide a brief analysis of their financial net position balances and year-to-year trends.

BOARD ACTION

This item is for informational purposes only.

BOISE STATE UNIVERSITY

Net Position Balances

As of June 30, 2020

Net Position:		6/30/2020
1	Invested in capital assets, net of related debt	320,456,834
2	Restricted, expendable	28,351,400
3	Restricted, nonexpendable	-
4	Unrestricted	147,163,945
5	Total Net Position	495,972,179
Unrestricted Net Position:		147,163,945
Obligated (Note A)		
6	Debt Reserves	21,455,457
Capital Projects		
7	Facilities	6,571,215
8	Equipment	1,502,426
Program Commitments		
9	Academic	1,104,492
10	Research	1,113,609
11	Other (Auxilliary and Student Affairs)	2,533,629
12	Administrative Initiatives	3,718,704
13	Total Obligated	37,999,532
Designated (Note B)		
Capital Projects		
14	Facilities	44,092,188
15	FFE	5,654,191
Program Commitments		
16	Academic	14,920,796
17	Research	9,301,539
18	Other (includes Auxilliary)	4,391,019
19	Administrative Initiatives	2,812,500
20	Net Covid Impact	25,466,205
21	Total Designated	106,638,438
22	Unrestricted Funds Available (Note C)	2,525,975
23	FY20 Operating Expenses	437,570,168
24	Ratio of Unrestricted Funds Available to operating expenses	0.58%
25	5% of operating expenses (minimum reserve target)	21,878,508
26	Two months of operating expenses	72,928,361
27	Ratio of Unrestricted Funds Available to two months of operating expenses	3.5%
28	Number of days expenses covered by Unrestricted Funds Available	2

Note A: **Obligated** - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service and staffing commitments for outstanding debt and personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

Note B: **Designated** - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

Note C: **Unrestricted Funds Available** - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are:

Unfunded Enrollment Workload Adjustment (EWA)
Budget reductions or holdbacks
Enrollment fluctuations



IDAHO STATE UNIVERSITY

Net Position Balances

As of June 30, 2020

Net Position:		FY20
1	Invested in capital assets, net of related debt	\$155,157,201
2	Restricted, expendable	\$15,910,848
3	Restricted, nonexpendable	
4	Unrestricted	<u>\$85,922,852</u>
5	Total Net Position	<u><u>\$256,990,901</u></u>
Unrestricted Net Position:		85,922,852
Obligated (Note A)		
6	Debt Reserves	6,688,414
	Capital Projects	
7	Facilities	12,583,168
8	Equipment	5,043,513
	Program Commitments	
9	Academic	11,348,087
10	Research	-
11	Other	-
12	Administrative Initiatives	-
	Other	-
13	Total Obligated	<u>35,663,182</u>
Designated (Note B)		
	Capital Projects	
14	Facilities	-
15	Equipment	
	Program Commitments	
16	Academic	17,085,560
17	Research	1,250,000
18	Other	3,775,000
19	Administrative Initiatives	-
20	Other	3,000,000
21	Planned Budget Shortfall	<u>2,792,100</u>
22	Total Designated	<u>27,902,660</u>
23	Unrestricted Available (Note C)	<u><u>22,357,010</u></u>
24	Operating expenses	253,036,172
25	Ratio of Unrestricted Funds Available to operating expenses	8.8%
26	5% of operating expenses (minimum available reserve target)	12,651,809
27	Two months operating expenses	42,172,695
28	Ratio of Unrestricted Funds Available to two months of operating expenses	53%
29	Number of days expenses covered by Unrestricted Funds Available	32

Note A: Obligated - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

Note B: Designated - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

Note C: Unrestricted Funds Available - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are: enrollment fluctuations, budget reductions or holdbacks.



University of Idaho

Net Position Balances

As of June 30, 2020

Information Taken from Audited Financial Statements, Footnotes and Associated Workpapers

1	Net Position:	
2	Invested in capital assets, net of related debt	\$ 258,246,064
3	Restricted, expendable	28,752,979
4	Unrestricted	<u>(9,713,003)</u>
5	Total Net Position	<u>\$ 277,286,040</u>
6	Unrestricted Net Position:	\$ (9,713,003)
7	Obligated (Note A)	
	- Debt Service Obligations	\$ 14,448,703
	- Capital Project and Equipment Fund Obligations	<u>5,870,496</u>
	Total Obligated Funds	<u>\$ 20,319,199</u>
9	Unrestricted Available (Note C)	<u>\$ (30,032,202)</u>
10	Operating expenses	\$415,809,563
11	Ratio of Unrestricted Funds Available to operating expenses	-7.2%
12	5% of operating expenses (minimum available reserve target)	\$20,790,478
13	Two months operating expenses	\$69,301,594
14	Ratio of Unrestricted Funds Available to two months of operating expenses	-43%
15	Number of days expenses covered by Unrestricted Funds Available	0

NOTES

Note A: Obligated - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which contractual commitments exist.

Note B: Designated - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

Note C: Unrestricted Funds Available - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are:

Budget reductions or holdbacks
 Enrollment fluctuations
 Unfunded Enrollment Workload Adjustment (EWA)

Lewis-Clark State College

Net Position Balances

As of June 30, 2020

Information Taken from Workpapers Relating to Audited Financial Statements

1 Net Position:	LCSC
2 Invested in capital assets, net of related debt	\$57,679,886
3 Restricted, expendable	3,292,512
4 Restricted, nonexpendable	0
5 Unrestricted	19,747,565
6 Total Net Position	<u><u>\$80,719,963</u></u>
7	
8 Unrestricted Net Position:	\$19,747,565
9 Obligated (Note A)	
10 Debt Service	\$0
11 Program Commitments	648,049
12 Capital Projects	4,054,697
13 Total Obligated	<u>\$4,702,746</u>
14	
15 Designated (Note B)	
16 Capital Projects	
17 Facilities	\$0
18 Equipment	1,007,679
19 Program Commitments	
20 Academic	2,181,597
21 Other	5,969,593
22 Other	2,243,267
23 Total Designated	<u>\$11,402,134</u>
24	
25 Unrestricted Available (Note C)	<u><u>\$3,642,685</u></u>
26	
27 Operating expenses	\$52,727,372
28 Ratio of Unrestricted Funds Available to operating expenses	6.91%
29 Ratio of Designated and Unrestricted Funds Available to operating expenses	28.5%
30 Ratio of Obligated, Designated and Unrestricted Funds Available to operating expenses	37.5%
31 5% of operating expenses (minimum available reserve target)	\$2,636,369
32	
33 Two months operating expenses	\$8,787,895
34 Ratio of Unrestricted Funds Available to two months of operating expenses	41%
35 Number of days expenses covered by Unrestricted Funds Available	25

Note A: Obligated - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

Note B: Designated - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

Note C: Unrestricted Funds Available - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are: enrollment fluctuations, budget reductions, or holdbacks.

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BOISE STATE UNIVERSITY

SUBJECT

Operating agreement between the University and the Boise State University Foundation

REFERENCE

October 2008 Board approved operating agreement (MOU) between Boise State University and the Boise State University Foundation.

December 2012 Board again approved operating agreement (MOU) between Boise State University and the Boise State University Foundation.

APPLICABLE STATUTE, RULE, OR POLICY

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

ALIGNMENT WITH STRATEGIC PLAN

Goal 2: Educational Attainment, Objective C: Access

BACKGROUND/DISCUSSION

Board Policy V.E. requires that an institution enter into a written operating agreement with each of its affiliated foundations and use the operating agreement template approved by the Board. 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 must address the topics outlined in Policy V.E. In June of 2019, the Board updated its operating agreement template for use by the institutions

In 2012, when the Board last approved the operating agreement (MOU) between Boise State University and the Boise State University Foundation, the Board indicated that when the agreement was next brought back to the Board, it should more closely conform with the policy and with the template provided by the Board. The University and the Boise State University Foundation have updated their Operating Agreement.

IMPACT

The Operating Agreement now conforms to Board Policy.

ATTACHMENTS

- Attachment 1 – Proposed Operating Agreement Between Boise State University and Boise State University Foundation
- Attachment 2 – Redline comparing the Proposed Operating Agreement

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to the Board Template
Attachment 3 – Redline comparing the Proposed Operating Agreement
to the 2012 MOU

STAFF COMMENTS AND RECOMMENDATIONS

Subsequent to the Board’s approval of the operating agreement in 2012, the Audit Committee (“Committee”), general counsel for the institutions and Board staff have had multiple discussions regarding the use of the foundation agreement template, which Board committee should review these agreements, and adherence to key components of Board Policy V.E. related to a separate, independent foundation. These discussions and various iterations of operating agreements took time and resulted in some of the institutions’ operating agreements exceeding the 3-year review timeline.

At its March 2020 meeting, the Committee discussed the institutions’ use of the template operating agreement required by Board Policy V.E.2.b. Use of the template is required in order to ensure that institutions meet the requirements of Board Policy V.E. The Committee decided that when an institution does not use the template as the basis for its agreement with its foundation, that the institution must provide the Board with a detailed annotation of Board Policy V.E.2.b. which cross references the paragraph in the proposed operating agreement which fulfills each policy requirement and a certification from the institution that the agreement meets all requirements of Board Policy V.E.

Boise State University has provided a redline of the proposed agreement to the foundation operating agreement template. There are no substantive deviations from the Board’s template.

BOARD ACTION

I move to approve the request by Boise State University to enter into the proposed Operating Agreement with the Boise State University Foundation.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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

This Operating Agreement (“Operating Agreement”) between Boise State University Foundation, Inc. (“Foundation”) and Boise State University (“University”) is entered into as of this ____ day of _____, 2020.

WHEREAS, the Foundation was organized and incorporated in Idaho for the purpose of engaging in activities designed to support and benefit the University, including receiving contributions from individuals, businesses, government units and other institutions who wish to support the activities of the University.

WHEREAS, the Foundation exists to receive contributions and hold, protect, manage, and invest such funds for the benefit of the University and to provide a degree of institutional excellence unavailable with state funding levels.

WHEREAS, the Foundation maintains and operates permanent endowment funds for the benefit of the University and distributes funds from time to time to provide support to the University, including distributions for educational scholarships for students attending the University, as well as specific capital, educational or other projects as may be identified by the University.

WHEREAS, as stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization, and the Foundation identifies and nurtures 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, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experienced in planning for and managing private support.

WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the University.

WHEREAS, the University and Foundation 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 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. so long as the policies and procedures are consistent with the Foundation's tax-exempt status and applicable Internal Revenue Service laws and rules, and that they will submit this Operating Agreement for initial 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.

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

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 that receives contributions and holds, protects, manages, and invests such funds for the benefit of the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation, Bylaws, its tax-exempt status, 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: (1) conflict with federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) cause the University to be in violation of applicable polices of the State Board; or (3) conflict with 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. The Foundation, to the extent practicable, also shall provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The University shall provide all such documents to the State Board.

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 designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the University to the Foundation's Board of Directors regarding the University's coordination with the Foundation's fundraising efforts.

b. *Executive Director:* The Executive Director of the Foundation is an employee of the University 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 paragraph (iii) below. The Executive Director shall be subject to the control and direction of the Foundation.

ii. The Executive Director shall be entitled to the University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Executive Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the Executive 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 Executive 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 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 constitute grounds for a termination proceeding by the University or for non-renewal 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. The Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation Executive Chair or designee.

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

d. *Other University Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the University and the Foundation determine it is appropriate for one or more additional University employees who function in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) to serve both the University and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such the University employee.

e. *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 Services. The University may provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the Support Agreement attached hereto as Exhibit “B” (“Support Agreement”). All University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless 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 Support 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 and equipment to the Foundation 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 and equipment shall be as set forth in the Support Agreement.

4. No Foundation Payments to University Employees. Notwithstanding any provision of this Operating 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 Operating Agreement.

ARTICLE IV
Management and Operation of Foundation

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

a. *Coordination with Vice President for University Advancement.* All Foundation gift solicitations shall be coordinated with 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. Additionally, the University shall require its affiliated foundations and nonprofit organizations to direct revenue, including gifts and membership dues, to the Foundation for management.

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. 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 Support 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 Gift Transfers.* The Foundation shall inform the University officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted funds separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.

b. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. If the 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 Foundation's Board of Directors may determine in the Board's sole discretion.

4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation shall designate certain of its directors, officers, and staff with signature authority for the Foundation in all financial transactions pursuant to its governing documents. The Foundation may supplement or change this designation; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee in a key administrative or policy making capacity, including but not limited to a University Vice President.

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. Transfers of a *de minimis* amount not to exceed \$10,000 from the University to the Foundation provided such funds are for investment by the Foundation for

scholarship or other general the University support purposes. This exception shall not apply to payments by the University to the Foundation for obligations of the University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

- d. The transfer is of funds raised by the University for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.

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 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.

8. Insurance. 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 and the Bylaws. 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. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively.

ARTICLE V

Foundation Relationships with the University

At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the University and the Foundation acknowledge that the Foundation

carries out functions for the benefit of the University. As such, the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges and any third-party obligations of confidentiality and protection of proprietary information, 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 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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

d. Each Party shall take all 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.

3. Name and Marks. Consistent with its mission to help to advance the plans and objectives of the University, the University grants the Foundation the limited, non-exclusive right to use the name of the University for use in its support of the University in connection with the Foundation's organizational business and activities. Any use by the Foundation of the University's logotypes or other trademarks must be with prior approval of the University through the Office of Trademark Licensing and Enforcement.

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 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 Executive Director by April 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. Any supplemental compensation of University 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 University, and the University shall then pay compensation to the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

8. Strategic Planning. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University. The Foundation shall include the University Vice President for University Advancement in the strategic and budget planning for the Foundation.

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 report will be provided on a timely basis to the University's President and the State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will 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 Standards Board (GASB). Accordingly, the University is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will include in its audited financial statement, schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the University Office of Finance and Administration in sufficient time to incorporate the same into the University's statements. All such

reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

3. Separate Audit Rights. If either Party has questions or concerns regarding the expenditure or collection of donor funds by the other, they shall each designate an employee or other representative to discuss the matter. If the matter remains unresolved, then the following shall apply: 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 pertinent to the expenditure of donated funds.

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 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 Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "F", and its Personal Commitment of Foundation Board of Directors Responsibilities 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 the Parties. Neither Party shall enter into any contract that would impose a financial or contractual obligation on the other without first obtaining the prior written approval of the other. University approval of any such contract shall comply with policies of the State Board with respect to State Board 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 the University first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the University, the University shall notify the State Board at the earliest possible date. Any such proposed purchase 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 74-206(1).

ARTICLE VIII
General Terms

1. Effective Date. This Operating 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 negotiations fail, the Parties will initiate the dispute resolution mechanism described below (through reference to the Foundation Executive Chair and the State Board) to further attempt 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. 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 Executive Chair of the Board of the Foundation and the University President. If the Foundation Board Executive Chair and the University President cannot resolve the dispute, then the dispute will be referred to the Foundation Executive Chair and the State Board 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 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.

4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and Articles of Incorporation, should the Foundation be dissolved or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation shall transfer to the State Board the balance of all property and assets of the Foundation, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the continued support and benefit of the University.

5. 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.

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

7. 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.

8. 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.

9. Notices. Any notices required under this Operating Agreement may be mailed or delivered as follows:

To the University:

President
Boise State University
1910 University Drive
Boise, Idaho 83706

with a copy to:

Vice President for University Advancement
Boise State University
1173 University Drive
Boise, Idaho 83706

To the Foundation:

Foundation Board Executive Chair
Boise State University Foundation, Inc.
1173 University Drive
Boise, Idaho 83706

with a copy to:

Executive Director
Boise State University Foundation
1173 University Drive
Boise, Idaho 83706

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

11. 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.

12. Indemnification. To the extent allowed by law, 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.*

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

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

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

16. Entire Agreement. This Operating 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 Operating Agreement on the above specified date.

BOISE STATE UNIVERSITY:

By: _____

Its: President

By: _____

Its: Vice President for University Advancement

**BOISE STATE
UNIVERSITY FOUNDATION, INC.:**

By: _____

Its: Executive Chair

By: _____

Its: Executive Director

Approved by the State Board of Education on the _____ day of _____, 2020.

EXHIBIT "A"

Loaned Employee Agreement

EXHIBIT “B”

Support Agreement

EXHIBIT “C”

Investment Policy

EXHIBIT “D”

Articles of Incorporation

EXHIBIT “E”

Bylaws

EXHIBIT "F"

Conflict of Interest Policy

EXHIBIT “G”

Personal Commitment of Foundation Board of Directors Responsibilities

OPERATING AGREEMENT
BETWEEN
BOISE STATE UNIVERSITY FOUNDATION, INC.
AND
BOISE STATE UNIVERSITY
~~INSTITUTION/AGENCY~~

This Operating Agreement (“~~Operating Agreement~~”) between Boise State University Foundation, Inc. (“Foundation”) and Boise State University (“University”) ~~Institution/Agency (“Operating Agreement”)~~ is entered into as of this _____ day of _____, 2020. ~~20___~~, by and between ~~Institution, herein known as “Institution/Agency”~~ and the ~~Foundation, Inc., herein known as “Foundation”~~.

WHEREAS, the Foundation was organized and incorporated in Idaho_____ for the purpose of engaging in activities designed to~~generating voluntary private~~ support and benefit the University, including receiving contributions from individuals, businesses, government units_____, _____, friends, corporations, foundations, and other institutions who wish to support~~others for the activities~~benefit of the University~~Institution/Agency~~.

WHEREAS, the Foundation exists to receive contributions and hold, protect, raise and manage, and invest such funds for the benefit of the University~~private resources supporting the mission and topriorities of the Institution/Agency, and provide opportunities for _____ (e.g. students) and~~ a degree of institutional excellence unavailable with state funding levels.

WHEREAS, the Foundation maintains and operates permanent endowment funds for~~is dedicated to assisting the benefit~~Institution/Agency in the building of the University and distributes funds from time to time~~endowment to provide~~address, through financial support to the University, including distributions for educational scholarships for students attending, the University, as well as specific capital, educational or~~long-term academic and other~~ projects as may be identified by ~~priorities of the University~~Institution/Agency.

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

WHEREAS, in connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experienced in planning for and managing private support.

WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development of the University~~Institution/Agency~~.

WHEREAS, the University~~Institution/Agency~~ and Foundation 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 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. so long as the policies and procedures are consistent with the Foundation's tax-exempt status and applicable Internal Revenue Service laws and rules., and that they will submit this Operating Agreement for initial 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.

WHEREAS, the Foundation and the University~~Institution/Agency~~ intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

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 that receives contributions~~responsible for securing, managing~~ and holds, protects, manages, and invests such funds~~distributing private support~~ for the benefit of the University~~Institution/Agency~~. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation, ~~and~~ Bylaws, its tax-exempt status, 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~~Institution/Agency~~ 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~~Institution/Agency~~; and (3) support and assist the University~~Institution/Agency~~ in fundraising and donor relations.

In carrying out its purposes, the Foundation shall not engage in activities that: (1) conflict with federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) cause the UniversityInstitution to be in violation of applicable polices of the State Board; or (3) conflict with the role and mission of the UniversityInstitution/Agency.

ARTICLE II Foundation's Organizational Documents

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the UniversityInstitution/Agency. The Foundation, to the extent practicable, also shall provide the UniversityInstitution/Agency with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The UniversityInstitution/Agency shall provide all such documents to the State Board.

ARTICLE III University Institution/Agency Resources and Services

1. UniversityInstitution/Agency Employees.

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

i. The University'sInstitution/Agency's Vice President for UniversityInstitution/Agency Advancement shall be responsible for coordinating the University'sInstitution/Agency's and the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the UniversityInstitution/Agency to the Foundation.

ii. The Vice President for UniversityInstitution/Agency Advancement or designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the UniversityInstitution/Agency to the Foundation's Board of Directors regarding the University'sInstitution/Agency's coordination with the Foundation's fundraising efforts.

b. Executive~~Managing~~ Director: The Executive~~Managing~~ Director of the Foundation is an employee of the University~~Institution/Agency~~ loaned to the Foundation. All of the Executive Director's~~Managing Director's~~ services shall be provided directly to the Foundation as follows:

- i. The Executive~~Managing~~ Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Executive~~Managing~~ Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in paragraph (iii) below. The Executive~~Managing~~ Director shall be subject to the control and direction of the Foundation.
- ii. The Executive~~Managing~~ Director shall be entitled to the University~~Institution/Agency~~ benefits to the same extent and on the same terms as other full-time University~~Institution/Agency~~ employees of the same classification as the Executive~~Managing~~ Director. The Foundation shall reimburse the University~~Institution/Agency~~ for all costs incurred by the University~~Institution/Agency~~ in connection with the University's~~Institution/Agency's~~ employment of the Executive~~Managing~~ Director including such expenses as salary, payroll taxes, and benefits.
- iii. The Foundation and the University~~Institution/Agency~~ shall enter into a written agreement, in the form of Exhibit "A" hereto, establishing that the Executive~~Managing~~ Director is an employee of the University~~Institution/Agency~~ 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~~Institution/Agency~~ with respect to the Executive~~Managing~~ 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 constitute grounds for a termination proceeding by the University~~Institution/Agency~~ or for non-renewal of any

obligation of the University~~Institution/Agency~~ to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University~~Institution/Agency~~.

3. The Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation Executive Chair~~president~~ or designee.

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

d. *Other University~~Institution/Agency~~ Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the University~~Institution/Agency~~ and the Foundation determine it is appropriate for one or more additional University~~Institution/Agency~~ employees who function in a key administrative or policy making capacity for the University~~Institution/Agency~~ (including, but not limited to, any University~~Institution/Agency~~ Vice-President or equivalent position) to serve both the University~~Institution/Agency~~ and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such the University~~Institution/Agency~~ employee.

e. *Limited Authority of University~~Institution/Agency~~ Employees.* Notwithstanding the foregoing provisions, no University~~Institution/Agency~~ employee who functions in a key administrative or policy making capacity for the University~~Institution/Agency~~ (including, but not limited to, any University~~Institution/Agency~~ 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 Services. The University~~may~~Institution/Agency~~—shall~~ provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the Support~~Service~~ Agreement attached hereto as Exhibit “B” (“Support” (“~~Service~~ Agreement”).”). All University~~Institution/Agency~~ employees who provide support services to the Foundation shall remain University~~Institution/Agency~~ employees under the direction and control of the University~~Institution/Agency~~, unless 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~~Institution/Agency~~ the portion of the overhead costs

associated with the services provided to the Foundation pursuant to the Support~~Service~~ Agreement. The portion of such costs shall be determined by the agreement of the Parties.

3. University~~Institution/Agency~~ Facilities and Equipment. The University~~Institution/Agency~~ shall provide the use of the University's~~Institution/Agency's~~ office space and equipment to the Foundation upon the terms agreed to by the University~~Institution/Agency~~ and the Foundation. The terms of use (including amount of rent) of the University's~~Institution/Agency's~~ office space and equipment shall be as set forth in the Support~~Service~~ Agreement.

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

ARTICLE IV Management and Operation of Foundation

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

a. Coordination with~~Authority~~ of Vice President for University~~Institution/Agency~~ Advancement. All Foundation gift solicitations shall be coordinated with~~subject to the direction and control of~~ the Vice President for University~~Institution/Agency~~ Advancement.

a.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~~Institution/Agency~~; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

b.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. Additionally, the University shall require its affiliated foundations and nonprofit organizations to direct revenue, including gifts and membership dues, to the Foundation for management. ~~Institution/Agency.~~

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 UniversityInstitution/Agency, the Foundation shall obtain the prior written approval of the UniversityInstitution/Agency. Similarly, the Foundation shall also obtain the prior written approval of the UniversityInstitution/Agency of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the UniversityInstitution/Agency.

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 UniversityInstitution/Agency shall be approved by the State Board before acceptance by the UniversityInstitution/Agency and the Foundation. In cases where the real property is intended to be used by the UniversityInstitution/Agency in connection with carrying out its proper functions, the real property may be conveyed directly to the UniversityInstitution/Agency, in which case the UniversityInstitution/Agency 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 UniversityInstitution/Agency 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 SupportService Agreement.

3. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the UniversityInstitution/Agency 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 Gift Transfers.* The Foundation shall inform the UniversityInstitution/Agency officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such UniversityInstitution/Agency officials shall account for such restricted funds separate from other program and department funds in accordance with applicable UniversityInstitution/Agency policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.

b. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. If the Foundation elects to use unrestricted gifts to make grants to the UniversityInstitution/Agency, such grants shall be made at such times and in such amounts as the Foundation's Board of Directors may determine in the Board's sole discretion.

4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation shall designate certain of its directors, officers, and staff~~designates the Foundation Treasurer as the individual~~ with signature authority for the Foundation in all financial transactions pursuant to its governing documents. The Foundation may supplement or change this designation ~~with written notice to the Institution/Agency~~; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee in a key administrative or policy making capacity, including but not limited to a University Vice President~~an Institution/Agency employee.~~

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

6. Transfer of University~~Institution/Agency~~ Assets to the Foundation. No University~~Institution/Agency~~ 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~~Institution/Agency~~ 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~~Institution/Agency's~~ transfer of such funds to the Foundation.
- b. The University~~Institution/Agency~~ has gift funds that were originally transferred to the University~~Institution/Agency~~ from the Foundation and the University~~Institution/Agency~~ wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.
- c. Transfers of a *de minimis* amount not to exceed \$10,000 from the University~~Institution~~ to the Foundation provided such funds are for investment by the Foundation for scholarship or other general the University~~Institution/Agency~~ support purposes. This exception shall not apply to payments by the University~~Institution~~ to the Foundation for obligations of the University~~Institution~~

to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

- d. The transfer is of funds raised by the UniversityInstitution for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.

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 UniversityInstitution/Agency 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.

8. Insurance. 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 UniversityInstitution/Agency 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 and the Bylaws. The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to both the UniversityInstitution/Agency and the State Board. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively.

ARTICLE V

Foundation Relationships with the UniversityInstitution/Agency

At all times and for all purposes of this Operating Agreement, the UniversityInstitution and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the UniversityInstitution and the Foundation acknowledge that the FoundationAssociation carries out functions for the benefit of the UniversityInstitution. As such,

the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges and any third-party obligations of confidentiality and protection of proprietary information, 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 UniversityInstitution/Agency shall be limited to the University'sInstitution/Agency's President and any designee of the University'sInstitution/Agency'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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

d. Each Party shall take all 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.

3. Name and Marks. —Consistent with its mission to help to advance the plans and objectives of the UniversityInstitution, the UniversityInstitution grants the FoundationAssociation the limited, non-exclusive right to use of the name of the UniversityInstitution, for use in its support of the UniversityInstitution. ~~The Association shall operate under the Institution's logotype in connection with the Foundation's support of its~~ organizational business and activities. Any use by the FoundationAssociation of the University'sInstitution's logotypes or other trademarks must be with prior approval of the UniversityInstitution through the Office of Trademark Licensing and Enforcement.

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 UniversityInstitution/Agency 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 will vote to accept such operating budget. Any of the University'sInstitution/Agency's funding requests to the Foundation shall be communicated in writing to the Foundation's Executive Director~~Foundation's Treasurer and Assistant Treasurer~~ by April 1 of each year.

6. Attendance of University'sInstitution/Agency's President at Foundation's Board of Director Meetings. The University'sInstitution/Agency'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 UniversityInstitution/Agency Employees. Any supplemental compensation of UniversityInstitution/Agency 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 UniversityInstitution/Agency, and the UniversityInstitution/Agency shall then pay compensation to the employee in accordance with the University'sInstitution/Agency's normal practice. No UniversityInstitution/Agency employee shall receive any payments or other benefits directly from the Foundation.

8. Strategic Planning. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University. The Foundation shall include the University Vice President for University Advancement in the strategic and budget planning for the Foundation.

ARTICLE VI Audits and Reporting Requirements

1. Fiscal Year. The Foundation and the UniversityInstitution/Agency 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 report will be provided on a timely basis to the University'sInstitution/Agency's President and the State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will be presented in accordance with standards promulgated by the Financial Accounting Standards Board (FASB). The Foundation is a component unit of the UniversityInstitution/Agency as defined by the Government Accounting Standards Board (GASB). Accordingly, the UniversityInstitution/Agency is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will include in its audited financial statement, schedules reconciling the

FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the UniversityInstitution/Agency Office of Finance and Administration in sufficient time to incorporate the same into the University'sInstitution/Agency's statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

3. Separate Audit Rights. If either Party has questions or concerns regarding the expenditure or collection of donor funds by the other, they shall each designate an employee or other representative to discuss the matter. If the matter remains unresolved, then the following shall apply: The UniversityThe Institution/Agency 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'sInstitution/Agency's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the UniversityInstitution/Agency and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records pertinent to the expenditure of donated funds.

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

- a. the annual financial audit report;
- b. an annual report of Foundation transfers made to the UniversityInstitution/Agency, summarized by UniversityInstitution/Agency 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 UniversityInstitution/Agency employees for whom the Foundation made payments to the UniversityInstitution/Agency 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~~Institution/Agency~~; 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 Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "F", and its Personal Commitment~~Code~~ of Foundation Board of Directors Responsibilities~~Ethical Conduct~~ is set forth as Exhibit "G".

2. Dual Representation. Under no circumstances may a University~~an Institution/Agency~~ employee represent both the University~~Institution/Agency~~ 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~~Institution/Agency~~ and the Foundation. This shall not prohibit University~~Institution/Agency~~ employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of the Parties. ~~Neither Party~~Institution/Agency. ~~The Foundation~~ shall ~~not~~ enter into any contract that would impose a financial or contractual obligation on the other~~Institution/Agency~~ without first obtaining the prior written approval of the other~~University~~Institution/Agency. ~~Institution/Agency~~ approval of any such contract shall comply with policies of the State Board with respect to State Board approval of University~~Institution/Agency~~ contracts.

4. Acquisition or Development of~~for~~ Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's~~Institution/Agency's~~ use without the University first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the University~~Institution/Agency~~, the University~~Institution/Agency~~ shall notify the State Board at the earliest possible date. Any such proposed purchase for the University's~~Institution/Agency's~~ use shall be a coordinated effort of the University~~Institution/Agency~~ 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 ~~the open meeting law, set forth in~~ Idaho Code Section, Title 74-206(1), Chapter 2.

ARTICLE VIII General Terms

1. Effective Date. This Operating 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 UniversityInstitution/Agency 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 UniversityInstitution/Agency to pay, within 180 days of written notice, all debt incurred by the Foundation on the University'sInstitution/Agency'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 UniversityInstitution/Agency that is not cured within the time frame set forth above, the UniversityInstitution/Agency 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 negotiations fail, the Parties will initiate the dispute resolution mechanism described below (through reference to the Foundation Executive Chair and the State Board) to further attempt 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. 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 Executive Chair of the Board of the Foundation and the UniversityInstitution/Agency President. If the Foundation Board Executive Chair and the UniversityInstitution/Agency President cannot resolve the dispute, then the dispute will be referred to the Foundation Executive Chair and the State Board 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 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.

4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and Articles of Incorporation, should the Foundation ~~be dissolved~~~~cease to exist~~ or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation shall transfer to the State Board ~~(or Institution, as applicable)~~ the balance of all property and assets of the Foundation ~~from any source~~, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the ~~continued support~~~~use~~ and benefit of the ~~University.~~~~Institution/Agency.~~

5. 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.

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

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

8. 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.

9. Notices. Any notices required under this Operating Agreement may be mailed or delivered as follows:

To the ~~University.~~~~Institution/Agency:~~

President
~~Boise~~ ~~Institution/Agency~~
~~Street Address~~
~~City, State~~ ~~University~~ ~~and Zip~~
~~1910 University Drive~~

Boise, Idaho 83706

with a copy to:

Vice President for University Advancement
Boise State University
1173 University Drive
Boise, Idaho 83706

To the Foundation:

~~—Managing Director~~
Foundation Board Executive Chair, Inc.
~~Boise — Street Address~~
~~—City, State University Foundation, Inc. and Zip~~
1173 University Drive
Boise, Idaho 83706

with a copy to:

Executive Director
Boise State University Foundation
1173 University Drive
Boise, Idaho 83706

10. No Joint Venture. At all times and for all purposes of this Operating Agreement~~Memorandum of Understanding~~, the University~~Institution/Agency~~ and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party.

11. Liability. The University~~Institution/Agency~~ 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.

12. Indemnification. To the extent allowed by law, the University~~Institution/Agency~~ 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~~Institution/Agency's~~ liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 *et seq.*

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

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

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

16. Entire Agreement. This Operating 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~~Institution/Agency~~ and the Foundation have executed this Operating Agreement on the above specified date.

BOISE STATE UNIVERSITY:

~~Institution/Agency~~

By: _____

Its: President

~~Institution/Agency Foundation, Inc.~~

By: _____

Its: Vice President for University

Advancement~~Chairman~~

BOISE STATE UNIVERSITY FOUNDATION, INC.:

By: _____

Its: Executive Chair

By: _____

Its: Executive Director

Approved by the State Board of Education on the _____ day of _____, 2020.

EXHIBIT "A"

Loaned Employee Agreement

EXHIBIT "B"

Support ~~Service~~ Agreement

EXHIBIT “C”

Investment Policy

EXHIBIT "D"

Articles of Incorporation

EXHIBIT "E"

Bylaws

EXHIBIT "F"

Conflict of Interest Policy

EXHIBIT "G"

Personal Commitment of Foundation Board of Directors Responsibilities

Code of Ethical Conduct

Operating Agreement - 26

OPERATING Memorandum of Understanding
Between
AGREEMENT
BETWEEN
BOISE STATE UNIVERSITY FOUNDATION, INC.
AND
BOISE STATE UNIVERSITY

This Operating Agreement (“Operating Agreement”) between Boise State University
Foundation, Inc. (“Foundation”)
and
Boise State University (“University”)

~~THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of this _____ day of _____, 2020. _____, 2012, by and between Boise State University (“University”) and Boise State University Foundation, Inc., an Idaho nonprofit corporation (“Foundation”).~~

WHEREAS, the**RECITALS**

~~The~~ Foundation was organized and incorporated in Idaho~~1964~~ for the purpose of engaging in activities designed to stimulating voluntary private support and benefit the University, including receiving contributions from individuals, businesses, government units and other institutions who wish to support the activities of the University.

~~A. _____~~ WHEREAS, the Foundation exists to receive contributions~~alumni, parents, friends, corporations, foundations,~~ and hold, protect, manage, and invest such funds~~others~~ for the benefit of the University:-

~~B. _____~~ The and to provide a degree~~Foundation exists independent from the University to advance the educational opportunities and environment at the University by raising and managing private resources supporting the mission and priorities of the University, and by providing opportunities for students and a margin~~ of institutional excellence unavailable with state ~~funds.~~

~~C. _____~~ The Foundation accomplishes its work by funding ~~levels.~~ University priorities, which includes, among other things, funding positions and programs which appeal to long-term, trust-based relationships with prospective donors and friends of the University.

WHEREAS, the Foundation maintains and operates permanent endowment funds for the benefit of the University and distributes funds from time to time to provide support to the University, including distributions for educational scholarships for students attending the University, as well as specific capital, educational or other projects as may be identified by the University.

~~D. — WHEREAS, as The Foundation is dedicated to assisting the University in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the University.~~

~~E. As stated in its articles of incorporation, the Foundation is a separately incorporated 501 (c)(3) organization, and the Foundation identifies is responsible for identifying and nurturesing 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, inIn connection with its fund-raising and asset-management activities, the Foundation utilizes, in accordance with this Operating Agreement, personnel experiencedmay require expertise in planning for and managing private support.~~

~~F. WHEREAS, the mission of the Foundation is to secure, manage and distribute private contributions and support the growth and development ofworks with both the University, and outside consultants to assist and advise in such activities.~~

~~WHEREAS, This MOU is intended to further define the relationship between the University and the Foundation desireand 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.~~

~~G. — 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. so long as the policies and procedures are consistent with the Foundation’s tax-exempt status and applicable Internal Revenue Service laws and rules, and that they will submit this Operating Agreement for initial 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.that will contribute to the coordination of their collaborative activities.~~

~~H. — This MOU has been reviewed and approved by the State Board of Education.~~

~~AGREEMENT~~

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

NOW THEREFORE, in

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

~~I. Acknowledgment of University Governance~~

~~A. The parties acknowledge that the State Board of Education is responsible for the governance of the University to include overseeing the mission, leadership, and operations; setting priorities and long-term plans; is legally responsible for the performance and oversight; and is responsible for the employment, compensation, and evaluation of all employees, including the President. The University President is the Chief Executive Officer of the University and is authorized to act on behalf of the University by the State Board of Education.~~

~~B. The parties agree that all actions taken pursuant to this MOU shall be in accordance with all University and State Board of Education policies and procedures governing the University. It shall be the duty of the University to obtain and communicate to the Foundation any approval by the State Board of Education that is required by any provision of this MOU or any State Board of Education policy.~~

~~II. Acknowledgment of Foundation Governance~~

~~A. The parties acknowledge that the Foundation is a separately incorporated 501(c)(3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the various missions of the University.~~

~~B. The parties acknowledge that the Foundation's board of directors is responsible for the operations, control and management of the Foundation including assets of the Foundation and the prudent management of gifts consistent with donor intent.~~

i.

ARTICLE I~~The~~
Foundation's Purposes

~~C. parties acknowledge that the Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.~~

~~The parties agree that all actions taken pursuant to this MOU shall be in accordance with the Foundation's articles and bylaws.~~

The Foundation is the primary affiliated foundation that receives contributions and holds, protects, manages, and invests such funds for the benefit of the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation, Bylaws, its tax-exempt status, 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.

~~D.~~ In carrying out its purposes, the Foundation shall not engage in activities that: (1) 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); (2) cause the University to be in violation of; applicable polices of the State Board; ~~of Education~~; or (3) conflict with the role and mission of the University.

ARTICLE II Foundation's Organizational Documents

~~All~~

~~E.~~ ~~The~~ Foundation shall provide copies ~~organizational documents, including but not limited to the articles~~ of its current Articles of Incorporation ~~incorporation~~ and Bylaws ~~bylaws, shall be provided~~ to the University. ~~The Foundation, to~~ To the extent practicable, ~~also the Foundation~~ shall provide the University with an advance copy ~~copies~~ of any proposed amendments ~~or changes to the~~ Foundation's Articles of Incorporation and Bylaws. The University shall provide all such documents.

~~III.~~ ~~The Foundation's General Relationship~~ to the State Board. ~~University~~

ARTICLE III

~~The Foundation shall continue to develop its own strategic plan in collaboration with~~
University Resources and Services

2. University Employees.

a. University/Foundation Liaison: The University's Vice President for University Advancement shall ~~leadership. This plan will~~ serve asto shape the University's Liaison to ~~focus of~~ the Foundation, ~~board and inform~~

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.

~~A.ii. The Vice President for University Advancement or designee shall attend each meeting of the Foundation's Board of Directors and shall report University and staff working for or on behalf of the University to the Foundation's Board of Directors regarding the University's coordination with the Foundation's fundraising efforts. Foundation of Foundation objectives.~~

~~B. Executive Director: The Executive Director of the Foundation shall work with University personnel to identify, cultivate, solicit and steward donor support of University priorities.~~

~~C. The Foundation may provide resources and distribute gifts to the University in support of its programs and mission.~~

~~D.3. The Foundation shall maintain its own directors and officers liability insurance.~~

~~E.a. No Foundation is an employee of shall receive direct payments, compensation, or other benefits from the University loaned to the Foundation. All of the Executive Director's services shall be, provided directly to the Foundation, ~~however, that Foundation employees may be subject to a form of employee loaning arrangement with the University as follows: set forth in Section IX below.~~~~

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 paragraph (iii) below. The Executive Director shall be subject to the control and direction of the Foundation.

~~i. For informational purposes, the~~

~~F. The Executive Director shall be entitled to the University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Executive Director. The Foundation shall provide the University President with an annual report regarding the Foundation's programs, as well as the Foundation's audited financial statement and other such other reasonable information as requested.~~

~~1. Not less than annually, the Foundation shall provide a written report to the University President setting forth the following items:~~

- ~~a) the annual financial audit report;~~
- ~~b) an annual report of Foundation transfers made to the University, summarized by department;~~
- ~~c)a. an annual report of unrestricted funds received by the Foundation;~~
- ~~d)b. an annual report of unrestricted funds available for use during the current fiscal year;~~
- ~~e) reimburse a list of all of the Foundation's officers, directors, and employees;~~
- ~~f) a list of University employees to whom the Foundation made direct payments 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, real estate investment, or real estate 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; provided, however, that the Foundation may withhold such information in its discretion to protect the attorney-client privilege concerning any such matters.~~

~~Notwithstanding the obligation to provide the information above, the Foundation shall not be obligated by this Agreement to disclose any confidential or proprietary information concerning any of its donors, including, without limitation, the identification of its donors or any information that is the subject of any confidentiality agreement with any donor, nor shall the Foundation be obligated to disclose any information that is protected or protectable by the attorney-client privilege.~~

~~G. 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 noted 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.~~

~~H. 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 required by applicable law or policy, the State Board of Education.~~

~~IV. The University's General Relationship to the Foundation~~

~~A. The University President shall be responsible for communicating University priorities and long-term plans to the Foundation.~~

~~B. The University recognizes that the Foundation is a private, nonprofit corporation with the authority to keep all records and data confidential consistent with the law.~~

~~C. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.~~

~~D. The University President shall work closely with the Foundation board and shall assume a prominent role in fund-raising activities. The President shall also attend Foundation board meetings by invitation, but shall not serve as a Foundation board member and shall not vote at such meetings.~~

~~E. The University shall establish and enforce policies that support the Foundation's ability to respect the privacy and preserve the confidentiality of donor records.~~

~~F. The Foundation board of directors shall have sole responsibility and authority for Foundation policy-making, financial oversight, spending authority, investment decisions, or supervision of Foundation employees.~~

~~1. 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, including~~

~~Loaned Employees; provided, however, a University employee may be permitted to make recommendations to the Foundation related to, among other things, the Foundation's policy making, strategic direction and fundraising activities.~~

~~G. No University employee shall receive direct payments, compensation, or other benefits from the Foundation, provided that the 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.~~

~~H. The University shall continue to require all of its affiliated foundations and nonprofit organizations to direct revenue, including gift and membership dues, to the Foundation for management. Each separate affiliated nonprofit organization or foundation has as its corporate or organizational purpose the enhancement and improvement of the University or its parts. As such, the parties acknowledge that it is proper and prudent for the Foundation to manage the funds of those affiliated foundations or nonprofit organizations.~~

~~I. The University and the Foundation acknowledge that the Foundation, as an independent entity, carries out functions for the benefit of the University. As such, the University shall share certain information with regard to donors, alumni and other such information needed by the Foundation to carry out its beneficial functions for the University. All such information shall be held by the Foundation as confidential and shall only be used in a manner that benefits the University.~~

~~J.a. The University will, on a regular basis and no less than once a year, transfer duplicate graduate (alumni) records to include all demographic and relationship data that might assist the Foundation in carrying out its mission. The University shall retain for its own purposes, student and graduate data to fulfill its service mission. Such transfer shall be accomplished via separate agreement between the parties.~~

~~V. Foundation Name, Seal and Logotype~~

~~Consistent with its mission to help to advance the plans and objectives of the University, the University grants the Foundation the limited, non-exclusive use of the name, Boise State University, for use in advancement purposes; however, the Foundation shall operate under its own seal and logotype and shall not use the University seal, logo or other identifying marks in the promotion of its own organizational business and activities.~~

~~VI.b. Foundation Responsibilities~~

~~A. Fundall costs incurred-Raising~~

- ~~1. The Foundation shall endeavor to create a relationship of trust, understanding and confidence conducive to increasing levels of private support for the mission and priorities of the University and shall accept gifts on behalf of the University.~~
- ~~2. The Foundation, in consultation with the University President, shall plan and execute comprehensive fund-raising and donor acquisition programs in support of the University's mission. These activities and any related services shall be provided by the Foundation as an independent organization.~~
- ~~3. The Foundation shall establish, adhere to, and periodically assess its gift and grant management and acceptance policies. It shall promptly acknowledge and issue receipts for all gifts and grants on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts and grants. No gifts, grants or transfers of real or personal property will be accepted by the Foundation which do not comply with state law, State Board of education policy, and University policy.~~
- ~~4. The Foundation shall not accept gifts or grants containing a condition committing the University contractually without prior written approval of the University President or Vice President for Finance and Administration.~~
- ~~5. The University shall coordinate fund-raising initiatives through the Foundation.~~
- ~~6. The University leadership shall work in conjunction with the Foundation board to identify, cultivate, and solicit prospects for private gifts.~~
- ~~7. 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 Foundation 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.~~

- ~~8. The 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 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 MOU shall be construed as a waiver of the Foundation's right to assert exemption from these statutes.~~
- ~~9. The Foundation shall maintain and enforce a conflict of interest policy.~~

~~B. Asset Management~~

- ~~1. The Foundation shall establish asset allocation, disbursement, and spending policies in accordance with applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).~~
- ~~2. The Foundation shall receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.~~
- ~~3. The Foundation shall engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records.~~
- ~~4. As part of the Foundation's fund management, all other University affiliated organizations shall utilize an accounting and database management system that is compatible with the Foundation. The Foundation shall have access to such information for purposes of fund and data management and the continued enhancement of the University.~~

~~C. Foundation Flexibility~~

- ~~1. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without the University first obtaining approval of the State Board of Education. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board of Education 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 of Education required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho law.~~

- ~~2. The Foundation shall conduct reasonable due diligence on all gifts of real property that it receives, and the Foundation may rely on various reports, studies, and inquiries conducted by the University in connection with the Foundation's due diligence. All gifts of real property intended to be held and used by the University shall be approved by the State Board of Education 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.~~
- ~~3. The Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities to further University purposes. Provided, however, that the University must receive the required approval of the State Board of Education in advance of any such action or commitment.~~
- ~~4. The Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue. The terms of any agreements related to these purposes shall clearly delineate the Foundation's independence from the University. Provided, however, that the University must receive approval of the State Board of Education in advance of any action or commitment by the University that requires such Board approval.~~

~~5.3. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donors or by law on the gift. The University will abide by such restrictions and provide appropriate documentation of such compliance to the Foundation.~~

~~D. Transfer of Funds~~

- ~~1. The Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the University in compliance with applicable laws, University policies, and gift agreements.~~
- ~~2. Foundation funds shall be kept separate from University funds.~~

~~3. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board of Education except when:~~

~~a)a. A donor inadvertently directs a contribution to the University that is intended for the Foundation; or~~

~~b) The University has gift funds that were transferred from and originated in the Foundation and the University wishes to return a portion of funds to the Foundation for reinvestment consistent with the original intent of the gift; or~~

~~c) The University has raised dedicated scholarship funds through an University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship nature of the funds; or~~

~~d)ii. Transfers of a *de minimis* amount not to exceed \$10,000 from the University to the Foundation provided such funds are for investment by the Foundation for scholarship or other general University's employment of the Executive Director including such University support purposes. This exception shall not be interpreted to allow the transfer of any appropriated funds nor apply to payments by the University to the Foundation for approved obligations of the University to the Foundation, operating expenses as salary, payroll taxes, and benefits. of the Foundation or other costs of the Foundation.~~

The Foundation and the University shall enter into a written agreement, in the form of Exhibit "A" hereto,

~~4. The Foundation's disbursements on behalf of the University shall be reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with the law.~~

~~5. The Foundation retains the right to disburse funds to other not-for-profit 501(c) (3) organizations under agreements it might have with donors.~~

~~VII. Foundation Funding and Administration~~

~~A. The Foundation shall be responsible for establishing that a financial plan to underwrite the Executive Director is an employee cost of Foundation programs, operations, and services.~~

- ~~B. The Foundation shall have the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift taxes, to support its operations.~~
- ~~C. The University but may provide to the Foundation office space, equipment, computer and telephone systems, utilities, and office supplies that may be necessary or required to fulfill its responsibilities and obligations pursuant to the terms of a written agreement described in Section IX below.~~
- ~~D. The Foundation shall maintain an annual operating budget and will provide a copy of the budget to the University President for informational purposes. Oversight of Foundation expenditures rests with the Foundation Audit Committee under review no less than once a quarter.~~
- ~~E. 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. The University need not conduct an actual audit to be afforded such access and shall be given such access at any time.~~
- ~~1. The University's access shall not include any confidential or proprietary information concerning any of its donors, including, without limitation, the identification of its donors or any information that is the subject of any confidentiality agreement with any donor, nor shall the University's access include any information that is protected or protectable by the attorney-client privilege.~~
- ~~F. The Foundation shall maintain a provision in its corporate documents for dissolution consistent with the State Board of Education Policy and applicable law.~~

~~VIII. University Responsibilities~~

- ~~A. The University will work with the Foundation to ensure that the University and its affiliated organizations comply with all of the terms of MOU.~~
- ~~B. The University will develop and report fund-raising goals to the Foundation regarding the development activities of University employees.~~

~~C. The University may provide administrative and other support for development activities of the Foundation so long as such services are provided in accordance with Section IX below.~~

~~D. University leadership will participate as spokespersons for the University and in donor solicitation as appropriate in support of the Foundation. The University shall educate its spokespersons regarding the independence of the Foundation from the University and instruct its spokespersons to communicate the Foundation's independence from the University.~~

~~IX. Services, Facilities, and Resources Provided by the Foundation and the University to One Another~~

~~A. The Foundation and University agree that in consideration for services, office space, equipment, computer and telephone systems, utilities, and offices supplies provided to one another, each party shall provide the other with fair and reasonable consideration to be negotiated annually by June 1 of the preceding fiscal year pursuant to a written agreement that specifies the nature of such services, facilities, and resources and the compensation that will be paid for such services by each of the parties. The rate assessed for the use of either party's services, facilities, and resources shall be at fair market value.~~

~~1. It is the intent of the parties that the University provide as little such support as reasonably necessary to support the Foundation's operation pursuant to this Section IX. A. The parties agree that the long term goal is that the Foundation become self sufficient.~~

~~B.iii. The Foundation and the University shall enter into a written agreement establishing that certain identified employees of the University are 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 Executive Director such employees, 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.~~

~~1.~~

~~2. Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable~~

law shall constitute grounds for~~result in~~ a termination proceeding by~~of the Loaned Employees' employment~~ with the University, or for non-renewal of any obligation of the Loaned Employee's contract with the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University,~~if any.~~

The

3. Loaned Employees shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation Executive Chair~~chair~~ or ~~her/his~~ designee.

4. ~~Of the Loaned Employees, Other loaned~~ shall be entitled to the fringe benefits of employment offered by the University. The Foundation shall be responsible for the cost of all compensation and benefit costs of the Loaned Employees working for the Foundation.

~~C. The Foundation agrees to provide a safe and proper working environment for the Loaned Employees. Since the Foundation has the right to control the employees providing services pursuant to this Operating Agreement shall also serve pursuant to a , the Foundation (in addition to other indemnifications herein granted) hereby agrees to defend and indemnify the University from and against all claims that arise within the course and scope of the employment of such Loaned Employees and to act as the employer for all purposes under respondeat superior. The Foundation shall ensure that its employees do not represent themselves as agents or employees of the University. All employees covered by the Loaned Employee Agreement shall, for all practical purposes, be Foundation employees and shall not be considered employees of the University.~~

~~X. Meetings and Continued Communications Regarding MOU~~

~~To ensure effective achievement of the items of this MOU, the University and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.~~

~~XI. Miscellaneous~~

~~A.b. Indemnification, which shall set forth The University and the Foundation each agree to indemnify, defend and hold the other party, their particular~~

~~responsibilities and duties 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 MOU. 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 MOU 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.~~

d. *Other University Employees Holding Key Foundation or Administrative or Policy Positions:* In the event the University and the Foundation determine it is appropriate for one or more additional University employees who function in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice-President or equivalent position) to serve both the University and the Foundation, then, pursuant to State Board Policy V.E., this Operating Agreement shall be amended to clearly set forth the authority and responsibilities of the position of any such the University employee.

e. *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.

4. *Support Services.* The University may provide administrative, financial, accounting, investment, and development services to the Foundation, as set forth in the Support Agreement attached hereto as Exhibit "B" ("Support Agreement"). All University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless 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 Support Agreement. The portion of such costs shall be determined by the agreement of the Parties.

5. *University Facilities and Equipment.* The University shall provide the use of the University's office space and equipment to the Foundation 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 and equipment shall be as set forth in the Support Agreement.

6. *No Foundation Payments to University Employees.* Notwithstanding any provision of this Operating 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 Operating Agreement.

ARTICLE IV
Management and Operation of Foundation

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

a. Coordination with Vice President for University Advancement. All Foundation gift solicitations shall be coordinated with 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. Additionally, the University shall require its affiliated foundations and nonprofit organizations to direct revenue, including gifts and membership dues, to the Foundation for management.

2. Acceptance of Gifts.

c. 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. 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.

d. 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.

~~XII~~.e. 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 Support Agreement.

4. 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 Gift Transfers. The Foundation shall inform the University officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted funds separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.

~~k~~.b. Unrestricted Gift Transfers. The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. If the 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 Foundation's Board of Directors may determine in the Board's sole discretion.

5. Foundation Expenditures and Financial Transactions.

a. Signature Authority. The Foundation shall designate certain of its directors, officers, and staff with signature authority for the Foundation in all financial transactions pursuant to its governing documents. The Foundation may supplement or change this designation; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee in a key administrative or policy making capacity, including but not limited to a University Vice President.

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.

~~4~~.6. 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.

7. 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. 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. Transfers of a *de minimis* amount not to exceed \$10,000 from the University to the Foundation provided such funds are for investment by the Foundation for scholarship or other general the University support purposes. This exception shall not apply to payments by the University to the Foundation for obligations of the University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
- d. The transfer is of funds raised by the University for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.

8. 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 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.

9. Insurance. 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.

10. 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".

11. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Bylaws. 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. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively.

ARTICLE V
Foundation Relationships with the University

At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the University and the Foundation acknowledge that the Foundation carries out functions for the benefit of the University. As such, the Parties shall share certain information as provided below.

1. Access to Records. Subject to recognized legal privileges and any third-party obligations of confidentiality and protection of proprietary information, 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 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. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.

d. Each Party shall take all 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.

3. Name and Marks. Consistent with its mission to help to advance the plans and objectives of the University, the University grants the Foundation the limited, non-exclusive right to use the name of the University for use in its support of the University in connection with the Foundation's organizational business and activities. Any use by the Foundation of the University's logotypes or other trademarks must be with prior approval of the University through the Office of Trademark Licensing and Enforcement.

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 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 Executive Director by April 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. Any supplemental compensation of University 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 University, and the University shall then pay compensation to the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

8. Strategic Planning. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University. The Foundation shall include the University Vice President for University Advancement in the strategic and budget planning for the Foundation.

ARTICLE VI
Audits and Reporting Requirements

2. Fiscal Year. The Foundation and the University shall have the same fiscal year.

~~B~~.3. 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 report will be provided on a timely basis to the University's President and the State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will 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 Standards Board (GASB). Accordingly, the University is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will include in its audited financial statement, schedules reconciling the FASB Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the University Office of Finance and Administration in sufficient time to incorporate the same into the

University's statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

4. Separate Audit Rights. If either Party has questions or concerns regarding the expenditure or collection of donor funds by the other, they shall each designate an employee or other representative to discuss the matter. If the matter remains unresolved, then the following shall apply: 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 pertinent to the expenditure of donated funds.

5. 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 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;
- ~~a)c.~~ an annual report of unrestricted funds received by the Foundation;
- ~~b)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;
- ~~C. Term and Termination.~~
- ~~The term of this MOU~~
- 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 Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "F", and its Personal Commitment of Foundation Board of Directors Responsibilities 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 the Parties. Neither Party shall enter into any contract that would impose a financial or contractual obligation on the other without first obtaining the prior written approval of the other. University approval of any such contract shall comply with policies of the State Board with respect to State Board 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 the University first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the University, the University shall notify the State Board at the earliest possible date. Any such proposed purchase 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 74-206(1).

ARTICLE VIII

General Terms

1. Effective Date. This Operating Agreement shall be effective on the date set forth above.

~~4. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, parties.~~

~~2. As a prerequisite to any other termination of this MOU by either party, the parties agree to first follow and complete the mandatory process, in sequence, set forth in Section XI. C. (Dispute Resolution). If and only if all the mandatory steps in section XI. C. are followed in sequence, then, either Party may, upon 90 days' prior written notice to the other, terminate this Operating Agreement MOU, and either Party may terminate this~~

Operating Agreement ~~MOU~~ in the event the other Pparty defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Pparty specifying the nature of the default. Should the University choose to terminate this Operating Agreement ~~MOU~~ 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 ~~MOU~~ 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~~the University holds on behalf of the Foundation in like manner. The Pparties agree that in the event this Operating Agreement ~~MOU~~ 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 Foundation Executive Chair and the State Board) to further attempt 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. ~~If a new agreement is not reached in such time and Section XI. C. (Dispute Resolution) has been followed, the parties shall refer the matter to the State Board of Education for assistance in reaching a resolution.~~

~~3. Termination of this MOU shall not constitute or cause dissolution of the Foundation.~~

~~D. Dispute Resolution. The P~~parties agree that in the event of any dispute arising from this Operating Agreement ~~MOU~~, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Pparties. If the staff cannot resolve the dispute, then the dispute will be referred to the Executive Chair of the Board of the Foundation and the University President. If the Foundation Board Executive Chair and the University President cannot resolve the dispute, then the dispute will be referred to the Foundation Executive Chair and the State Board ~~of Education~~ for resolution. If they are unable to resolve the dispute, the Pparties shall submit the dispute to mediation by an impartial third Pparty or professional mediator mutually acceptable to the Parties. ~~parties.~~

~~E.3. Litigation. As a prerequisite to any litigation filed between the Foundation and the University on any matter whatsoever, the parties agree to first follow the process set forth in Section XI. C. (Dispute Resolution), unless the dispute concerns a written agreement between the parties that provides for an alternative means of dispute resolution, in which case the terms of such alternate means of dispute resolution contained in the separate agreement shall apply. If and only if all the above mandatory steps in section XI. C. are followed in sequence and the a dispute remains unresolved, then, in~~

such case, either Party shall have the right to initiate litigation ~~on issues~~ arising from this ~~Operating Agreement. 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.

~~F.4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws~~ ~~Foundation's bylaws~~ and ~~Articles~~ ~~its articles~~ of ~~I~~ incorporation, should the Foundation ~~be dissolved~~ ~~cease to exist~~ or cease to be an Internal Revenue Code §501(c)(~~1~~)-(3) organization, the Foundation shall transfer ~~its assets and property~~ to the State Board ~~the~~ ~~balance of all property and assets of the Foundation, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust~~ ~~Education to be held~~ for the ~~continued support and benefit~~ ~~use~~ of the University, ~~to the University, to a reincorporated successor Foundation in accordance with the law and donor intent.~~

~~G.5. Headings. Headings are for reference only and do not affect the interpretation of this MOU.~~

~~H. Governing Law. This MOU shall be governed by the laws of the state of Idaho.~~

~~I. Legal Representation. The parties acknowledge that they have retained separate legal counsel to draft and review this MOU on behalf of each party.~~

~~J.6. No Third Party Beneficiaries. This MOU shall not be construed to create any rights, remedies, or benefits upon any third party.~~

~~6. Separate 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.~~

~~7. Modification. Any modification to the Operating Agreement or Exhibits hereto shall be in writing and signed by both Parties.~~

~~8. 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.~~

9. 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.

10. Notices. Any notices required under this Operating Agreement may be mailed or delivered as follows:

To the University:

President
Boise State University
1910 University Drive
Boise, Idaho 83706

with a copy to:

Vice President for University Advancement
Boise State University
1173 University Drive
Boise, Idaho 83706

~~Entities.~~

To the Foundation: _____

Foundation Board Executive Chair
Boise State University Foundation, Inc.
1173 University Drive
Boise, Idaho 83706

with a copy to:

Executive Director
Boise State University Foundation
1173 University Drive
Boise, Idaho 83706

11. No Joint Venture. At all times and for all purposes of this Operating Agreement ~~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.

~~K.12. Liability. party.~~ 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.

~~L. Non-Assignability. This Agreement is not assignable by either party, in whole or in part.~~

13. Indemnification. To the extent allowed by law, 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.

~~M.14. Assignment. This Operating Agreement is not assignable by either Party, in whole or in part.~~

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

~~N.16. Severability. If any provision of this Operating Agreement, term, or part of this MOU, except for the provisions of this MOU requiring prior appropriation, is held to be invalid or, illegal, unenforceable to any extent, the remainder of this Operating Agreement is not, or in conflict with any law of the State of Idaho, the validity, legality, and enforceability of the remaining portions or provisions shall not be affected thereby and that, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular part, term or provision shall held to be enforced to the greatest extent permitted by law. invalid.~~

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

~~Signature page follows.~~

IN WITNESS WHEREOF, the University and the Foundation ~~parties~~ have ~~caused this MOU to be~~ executed this Operating Agreement on the ~~by their duly authorized officers as of the date first~~ above specified date ~~written~~.

UNIVERSITY:

BOISE STATE
FOUNDATION, INC.;

By: _____

By: _____

Its: _____

President,

Its: Executive

Chair,

By: _____

By: _____

Its: Vice President for Boise State
University Advancement

Its: Executive Director

BOISE STATE

Approved by the Boise State Board of
Education on the _____ day of
_____, 2020.

UNIVERSITY Date: _____

EXHIBIT "A"

Loaned Employee Agreement

EXHIBIT "B"

Support Agreement

EXHIBIT "C"
Investment Policy

EXHIBIT "D"

Articles of Incorporation

EXHIBIT "E"

Bylaws

EXHIBIT "F"

Conflict of Interest Policy

EXHIBIT "G"

Personal Commitment of~~University~~
Foundation Board of Directors
Responsibilities,~~Inc.~~

Date: _____

Secretary,
~~Boise State University Foundation~~

Date: _____

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