

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
JUNE 21, 2023**

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PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
JUNE 21, 2023

UNIVERSITY OF IDAHO

SUBJECT

Authority to enter into naming rights agreement

REFERENCE

| | |
|---------------|---|
| June 2014 | Board approved Boise State University's request to enter a naming agreement with Albertson's to name the Boise State University stadium "Albertsons Stadium." |
| January 2018 | Board approved University of Idaho's request to enter into a naming agreement with ICCU for the ICCU arena project. |
| June 2019 | Board approved Boise State University's request to enter a naming agreement with Extra Mile to name the arena the "Extra Mile Arena." |
| December 2021 | Board approved Lewis-Clark State College's request to enter a naming agreement with P1FCU for the Activity Center. |

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections I.K. (Naming/Memorializing Building and Facilities) and V.I. (Real and Personal Property and Services)

BACKGROUND/DISCUSSION

The University of Idaho (UI) has engaged P1FCU, a credit union, for the naming right to the Kibbie-ASUI Activity Center, also known as the Kibbie Dome.

Potlatch No. 1 Financial Credit Union (P1FCU), was founded in 1938 in Lewiston, Idaho, as a not-for-profit financial cooperative serving 353 members. P1FCU now serves over 100,000 members across 19 Idaho counties, eight Oregon counties, and the entire state of Washington.

The UI and P1FCU have arrived at a proposed agreement for naming the Kibbie-ASU Activity Center the "P1FCU Kibbie Dome," which is presented to the Board in attachment 1. The UI will receive five million dollars from P1FCU, in exchange for which P1FCU will own the name and logo of the arena for a term of ten years commencing on July 1, 2023.

Additional items included in the agreement are:

- Use of the dome for advertising and promotion.
- Official sponsor of the Better Education About Money for Students program to enhance programming for student financial literacy.

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- Official sponsor for the Elevate Idaho program in UI Athletics to support student athlete financial literacy.
- Reference to existing agreement with Office of Alumni Relations agreement.

The UI and P1FCU will work closely together in the creation of logos for the dome utilizing the dome name along with elements of names and logos of both parties. Signage and location of signage will also be the subject of mutual collaboration. The University is excited to enter into this long-term relationship with P1FCU.

The University requests approval of the agreement, Attachment 1, and authorization from the Board for execution of the agreement by the UI president or his designee. The University also requests that the Board waive any application of Board Policy I.K. Naming/Memorializing Building and Facilities. This policy does not contemplate an agreement for the sale of naming rights, nor does it specifically prohibit one. The Agreement can be deemed to fall under Board Policy V.I. (Real and Personal Property and Services) as a sale of the naming rights for the specified period of time. Waiver of Policy I.K provides clarity that this is a contract for services.

IMPACT

The proceeds from the agreement with P1FCU will provide five million dollars to be invested in UI priorities at the discretion of the president.

ATTACHMENTS

Attachment 1 – Agreement

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Board Policy I.K.1.b, outlines the requirements by which a building, facility, or administrative unit may be named for other than a former employee of the system of higher education. These include consideration of the nature of the individual's gift and its significance to the institution; the eminence of the individual whose name is proposed; and the individual's relationship to the institution. The policy does not contemplate selling the rights to name a facility. The Board has established a precedent on four previous occasions dating back to 2014 to sell naming rights for institution facilities.

Staff recommends approval.

BOARD ACTION

I move to waive the application of Board Policy I.K and to approve the request by the University of Idaho to enter into an Agreement for Naming Rights with P1FCU, in substantial conformance to Attachment 1, and authorize the President of the University of Idaho, or the President's designee, to execute the agreement and any related transactional documents.

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Moved by _____ Seconded by _____ Carried Yes _____ No _____

**AGREEMENT
for
NAMING RIGHTS**

THIS AGREEMENT FOR NAMING RIGHTS ("Agreement") is entered into by and between P1FCU ("P1FCU") a credit union in Idaho, and (ii) Regents of the University of Idaho ("University"), a state educational institution and body politic and corporate organized and existing under the constitution and laws of the State of Idaho. University and P1FCU may also hereinafter be referred to individually as "Party" or jointly as "Parties" depending on context.

RECITALS

A. The University owns the Kibbie-ASUI Activity Center, also known as the Kibbie Dome ("Dome") on its campus located in Moscow, Idaho. The University currently uses the Dome for home games for its football, soccer, track, and tennis, as well as other sporting events as well as non-sporting events commensurate with the facility.

B. P1FCU is a member owned state-chartered credit union with branches located through- out the state of Idaho, Oregon and Washington.

C. P1FCU and the University wish to expand upon the mutually beneficial relationship they have established through University of Idaho Agreement Number UI-744 for the provision of P1FCU debit cards to University Alumni (the "Alumni Debit Card Agreement") by creating additional sponsorship opportunities.

D. P1FCU wishes to acquire, and the University agrees to provide, naming rights to the Dome for the term set forth herein and such other associated rights as are specifically hereinafter set forth under the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual covenants herein set forth, the Parties hereby agree that the foregoing Recitals are incorporated herein and further agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings set forth below when used in this Agreement.

- 1.1. **"Agreement"** is defined in the Preamble.
- 1.2. **"Annual Meeting"** is the meeting described in Section 3.5.
- 1.3. **"Dome"** is described in Recital A.
- 1.4. **"Dome Logo Usage Guidelines"** means the guidelines described in Section 2.2.1.
- 1.5. **"Dome Grounds"** means the Dome and the area outside of and immediately adjacent to the Dome.
- 1.6. **"Athletic Program"** means the University's athletic programs, including the Teams, and

the programs' products and services associated therewith.

- 1.7. **"Athletic Program Marks"** means all Marks associated only with the Athletic Program and, shall not include Marks of the University not associated with University Athletics.
- 1.8. **"Commencement Date"** shall mean the date of the last signature hereto.
- 1.9. **"Completion Memorandum"** shall mean the memorandum described in Section 4.1.
- 1.10. **"P1FCU"** is defined in the Preamble.
- 1.11. **"P1FCU Marks"** means Marks owned by P1FCU.
- 1.12. **"P1FCU Sponsorship Area"** is defined in Section 3.1.5.
- 1.13. **"Marks"** means either Athletic Program Marks or P1FCU Marks or both depending on context. Marks shall include designs, logos, service marks, corporate or trade names, trademarks or other identification marks.
- 1.14. **"Team"** or **"Teams"** means one or more of the University's men's and women's NCAA teams including Football, Soccer, Track, and Tennis.
- 1.15. **"Term"** is defined in Section 4.1.

2. NAMING RIGHTS

- 2.1. Grant of License. The University hereby grants to P1FCU the exclusive right and license to name the Dome during the Term (defined below), and the Parties hereby agree that the Dome shall be known as "P1FCU Kibbie Dome" (the "Dome Name") during the Term in accordance with the terms and conditions of this Agreement.
- 2.2. Name and Logo.
 - 2.2.1. Development of Dome Logo. University and P1FCU shall work together to create and develop mutually approved versions of the Dome Name and accompanying elements of an Dome Logo or Logos (collectively referred to hereinafter as the "Dome Logo") as set forth below.
 - 2.2.2. The Dome Logo may contain Athletic Program Marks, P1FCU Marks, or elements of Marks from either party with the consent of such party.
 - 2.2.3. Signs displaying the Dome Logo shall be placed on and around the Dome in mutually agreed upon locations and in a manner consistent with the esthetics of each sign location. Locations may include, but are not limited to, the northern exterior wall, the west entrance, the east business operations entrance, the western and eastern interior wall, and the field.
 - 2.2.4. Costs of the initial development of the Dome Logo and initial construction and installation of Dome Logo signs shall be paid by P1FCU in addition to the naming consideration.
 - 2.2.5. Any use of either Party's Marks, or any elements thereof, incorporated into the Dome Logo and any Dome Logo signs shall conform to such Party's applicable guidelines for such use, including without limitation, color and lettering. Each party shall supply

the other Party with such guidelines.

- 2.2.6. The Parties shall create mutually agreed upon Dome Logo Usage Guidelines which shall apply to use of the Dome Logo by both Parties.

2.3. Ownership of Dome Name and Logo; Licenses

- 2.3.1. Ownership. P1FCU shall at all times be the owner of the Dome Name and Dome Logo, subject to the terms and conditions of this Agreement, except that ownership of Athletic Department Marks, and all elements thereof, incorporated into any Dome Logo shall remain in the University.
- 2.3.2. University License. P1FCU hereby grants to University, subject to the terms and conditions of this Agreement, a royalty free license for use of the Dome Name and Dome Logos, consistent with the terms and conditions of this Agreement, and for any lawful purpose in connection with the University's marketing, operation and promotion, including the sale of merchandise by University.
- 2.3.3. P1FCU License. University hereby grants to P1FCU, subject to the terms and conditions of this Agreement, a royalty free license for use and incorporation of Athletic Program Marks into the Dome Name and Dome Logo and for the use of such Marks, consistent with the terms and conditions of this Agreement, in connection with P1FCU's marketing, operation and promotion, including the sale of merchandise by P1FCU.
- 2.3.4. Party Approval for Materials. Prior to use of a Mark or elements of a Mark of the other Party, each Party will seek approval of the use from the other Party, which approval shall not be unreasonably withheld.
- 2.3.5. Reversion of Ownership upon Conclusion of Term. Upon the conclusion of the Term of this Agreement including any renewals hereof, ownership of the Dome Name and Dome Logos shall immediately vest in the University, except for rights in P1FCU Marks or elements thereof incorporated into the Dome Name and Dome Logo. Use of P1FCU Marks in the Dome Name and Dome Logos thereafter shall be governed by Section 2.8.

2.4. Use of Name and Logo

- 2.4.1. Use Guidelines. Use of the Dome Name and Dome Logo will be governed by the terms and conditions of this Agreement and by the Dome Logo Usage Guidelines.
- 2.4.2. University Obligations for Use. University shall use the Dome Name and Logos for:
 - 2.4.2.1. All University references to the Dome shall refer to the Dome by the Dome Name, including on all tickets for events in the Dome and including on University directional signage.
 - 2.4.2.2. University shall use best efforts (including the placement of appropriate provisions in agreements) to have other University advertisers, sponsors, and media rights holders use the Dome Name, and where appropriate, the Dome Logo when referring to the Dome, including use of the Dome Name when referencing the Dome during game broadcasts and during promotional announcements over the PA system.

- 2.4.2.3. University will use best efforts to work with local and state agencies to provide directional and informational signs located in public rights-of-way, streets and highways in the vicinity of the Dome to refer to the Dome by the Dome Name.
- 2.4.3. Use of Dome Name and Logo in Promotional Materials and Products. Subject to the terms and conditions of this Agreement, each Party may use the Dome Name and Dome Logos in promotional materials and products.
 - 2.4.3.1. Any such consumer merchandise and consumer products shall:
 - a) Be of good quality in design, material and workmanship commensurate with industry standards;
 - b) Be suitable for the intended use and purpose;
 - c) Be free of injurious, deleterious or toxic substances; and
 - d) Not cause harm when used as instructed and with ordinary care for their intended use.
 - 2.4.3.2. Further, any such promotional materials or products shall be sold and distributed in material compliance with all applicable laws. Each Party shall be independently and solely responsible for any recalls whether initiated voluntarily or at the request of a government agency, for any promotional materials and products created by such Party under the terms of this Agreement
- 2.5. Protection of Dome Name and Dome Logos. P1FCU shall have the first and primary right and the sole responsibility for controlling and protecting the Dome Name and Dome Logos, with the exception of any Athletic Program Marks or elements thereof incorporated therein.
 - 2.5.1. Actions taken or filed for purposes of protection shall be at the discretion and cost of P1FCU, provide however, P1FCU shall not have responsibility for costs incurred by University in protecting Athletic Program Marks, or elements thereof, which are incorporated into the Dome Name and Dome Logos.
 - 2.5.2. Protection of the Dome Name and Dome Logos may include copyright applications and registrations, and initiating, prosecuting, defending and controlling litigation in relation to protection of the Dome Name and Dome Logos.
 - 2.5.3. University agrees to cooperate with P1FCU in any such protection action.
 - 2.5.4. University may, to the extent University has viable legal claims, elect to initiate or pursue legal action or defense regarding protection of the Dome Name and Dome Logos, but only in the event P1FCU first notifies University in writing that P1FCU does not intend to initiate or pursue such legal action. Any recovery by University in excess of litigation expenses and actual damages shall be shared equally with P1FCU.
- 2.6. Prohibited Uses and Associations. The following products or classes of services shall not have the Dome Name or Dome Logos associated with them in any direct association by P1FCU, nor shall P1FCU sell advertising rights to any company that engages in the management of any of the following businesses, or include a reference to any of the following prohibited products or classes of services on any advertising directly above, below, next to or in immediate proximity to the Dome Name and/or Dome Logos, unless otherwise agreed to by the other Party, which approval may be withheld in such Party's sole discretion:

- (i) Gambling (except the State authorized lottery)
- (ii) Alcoholic Beverages
- (iii) Prophylactics
- (iv) Feminine Hygiene Products
- (v) Tobacco products
- (vi) Sexually Explicit Materials
- (vii) Adult entertainment
- (viii) Religious and/or political materials
- (ix) Ammunition and/or firearms
- (x) Material that is reasonably likely to be considered objectively defamatory, obscene, profane, vulgar or otherwise socially unacceptable or offensive to the general public.
- (xi) Advertising that is reasonably likely to materially discredit the purposes, values, principles or mission of the NCAA or University or PIFCU, or is reasonably likely to have a materially adverse effect on the interests of intercollegiate athletics or higher education.

2.6.1. PIFCU agrees that in exercise of its rights granted hereunder, it shall ensure that any use of the Dome Name and/or Dome Logos or any other representation of the University as permitted hereunder shall be mindful of and consistent with the good image, message and reputation of the University and that such promotion or recognition will not materially distort or impair the presentation and image of the University, its Athletics program and the respective teams.

2.7. Change of Dome Name &/or Dome Logos.

2.7.1. There shall be no change in the Dome Name other than as is necessary due to any of the following:

2.7.1.1. Change in the control of PIFCU, including without limitation change resulting from a corporate restructuring such that all or substantially all of the corporate assets of PIFCU are sold or transferred, or

2.7.1.2. A material change in marketing by PIFCU including but not limited to a change of name.

2.7.2. Any such change must be approved by University, which approval shall not be unreasonably withheld. PIFCU shall give notice of any desire to change the Dome Name, including a detailed description of the reasons therefor, and the Parties shall discuss in good faith any objections or concerns of the University.

2.7.3. Changes to the Dome Logo in conjunction with a change to the Dome Name shall be the responsibility of PIFCU and shall require approval of the University, which approval shall not be unreasonably withheld. PIFCU shall bear all direct, out-of-pocket and other costs and expenses associated with any change to the Dome Name or Dome Logos approved by the University, including costs for creation of new name and logos, construction and placing of new signs, replacement and printing of new letterhead, stationery or other written materials bearing the Dome Name or Dome Logos, and creation or revision of advertising and advertising copy necessary to accommodate such change.

2.7.4. Either Party may request a change to an Dome Logo or Logos due to a material change in such party's branding. Any such change shall be subject to the approval of the other Party, which approval shall not be unreasonably withheld. Absent an agreement between the Parties to the contrary, the requesting Party shall bear all direct, out-of-pocket and other costs and expenses associated any such approved change, including costs for creation of new name and logos,

construction and placing of new signs, replacement and printing of new letterhead, stationery or other written materials bearing the Dome Logos, and creation or revision of advertising and advertising copy necessary to accommodate such change.

- 2.8. Use of Dome Name and Dome Logos upon Expiration/Termination of the Term. At such time as the Term of this Agreement expires by reason of the end of the Term or from termination of this Agreement other than for default, the University shall have the right to continue to use the Dome Name and Dome Logos for up to 180 days after such expiration/termination. All then existing Usage Guidelines shall remain in effect during such use by the University. Either Party shall be permitted to sell or otherwise dispose of any then-existing inventory containing the Dome Name or any Dome Logos until such inventory is depleted or one hundred eighty (180) days from such expiration/termination, whichever first occurs.

3. SPONSORSHIP ELEMENTS

- 3.1. Subject to the terms and conditions of this Agreement, University grants to PIFCU the right to have the Dome Name and Dome Logos displayed on signs ("Sponsorship Signs") at and on the Dome, within the Dome Grounds, and in the Parking Areas associated with the Dome.
 - 3.1.1. Placement of Sponsorship Signs shall be by the University with the approval of PIFCU. The Parties will collaborate on locations of the signs as outlined in section 2.2.3. Content of Sponsorship Signs beyond the Dome Name and Dome Logos shall require the consent of the University, which consent shall not be unreasonably withheld.
 - 3.1.2. The cost of initial construction and installation of Sponsorship signs shall be paid by PIFCU under this Agreement, and this payment will be in addition to the consideration for the naming right.
 - 3.1.3. University shall maintain the Sponsorship Signs in good condition and repair, and shall be responsible for protection and security of the Sponsorship Signs. Alteration, removal or relocation of a Sponsorship Sign after initial completion and installation shall require a written request from PIFCU to the University as well as University's consent, which consent shall not be unreasonably withheld. Actual costs of any approved alteration, removal or relocation of a Sponsorship Sign shall be charged by the University to PIFCU.
 - 3.1.4. Wayfinding signage and other University signs that may contain the Dome Name and Dome Logos for purposes of direction to the public or for purposes of University promotion shall not be considered Sponsorship Signs and shall be the responsibility of the University, including all costs of construction, installation, operation and maintenance.
 - 3.1.5. PIFCU shall have the right to be the most prominent sponsor within and on the exterior of the Dome as well as in the Dome Grounds including the field ("PIFCU Sponsorship Area"), during all events at the Dome, and no other sponsor or advertiser, nor any brands of any other sponsor or advertiser, shall have prominence equal to or greater than PIFCU. If any financial institution or brand wishes to expand their sponsorship prominence it may not exceed two-thirds the prominence of the smallest PIFCU sponsorship. This shall apply to all now existing, or hereafter created advertising or sponsorship inventory within the PIFCU Sponsorship Area.
- 3.2. Advertising by PIFCU. The content of PIFCU advertising which uses or incorporates the Dome Name and/or Dome Logos shall be in the sole discretion of PIFCU subject, however, to the content limitations of Section 2.6 above. Additionally, in no event shall any such PIFCU advertising contain

any materials that are lewd, vulgar, sexually explicit, offensive, discriminatory against a protected class or offensive to the sensibilities of the community at large. All such advertising and other PIFCU signage which uses or incorporates the Dome Name and/or Dome Logos shall be subject to the approval of the University, which approval shall not be unreasonably withheld. PIFCU shall submit all such Advertising to the University a reasonable time prior to using such in the public so as to allow sufficient time for a reasonable review by University.

3.3. Other Benefits.

- 3.3.1. Use of Dome for Advertising and Promotion. PIFCU shall have the right to use images of the Dome in PIFCU advertising and promotions under the terms set out in Section 2.4 above. This right shall include reasonable access to the Dome for purposes of photographing, filming or otherwise creating the advertising and promotion. Further, PIFCU shall have the right to a display table in a public area in front of and/or inside the Dome where ticket holders pass on their way to and from ticketed events. Size and location of the table shall be mutually agreed to by the Parties.
- 3.3.2. PIFCU will be the official sponsor of the University's Better Education About Money for Students ("BEAMS") program. PIFCU will assist University Financial Aid with the development and scaling of the BEAMS program to expand these services to a broader student audience.
- 3.3.3. PIFCU will be the official sponsor of the University's Elevate Idaho financial literacy program for student athletes. PIFCU will assist Athletics with the development and scaling of the Elevate Idaho program in support of student athletes' financial literacy.
- 3.3.4. PIFCU will partner with the University College of Business and Economics and University Extension Personal and Family Finance programming to explore mutually beneficial opportunities to deliver high impact programming in areas such as finance, marketing, and financial literacy.
- 3.3.5. PIFCU and the University will cooperate in good faith to explore possible extension of the Alumni Relations Agreement.
- 3.3.6. The University will reserve for PIFCU a mutually agreed upon number of parking spaces on gamedays.

3.4. Annual Planning and Review Meeting.

- 3.4.1. Within 30 days of the completion of each fiscal year of the University, representatives of the Parties shall meet ("Annual Meeting") to discuss and review each Party's performance under this Agreement to date and to discuss and plan for ways to maximize the mutual benefit of this Agreement to the Parties.
- 3.4.2. At, or prior to the Annual Meeting, the University shall supply PIFCU with a written schedule of all then known Athletic Programs games to be played in the Dome, as well as all major University events planned for the Dome, in the upcoming fiscal year.
- 3.4.3. At, or prior to the Annual Meeting, PIFCU shall supply the University with a written schedule of proposed PIFCU events under Section 3.4.3 above, including the proposed date of the event, the portion of the Dome to be used, the general purpose of the event, and the estimated number of participants.

3.4.4. The attendance at the Annual Meeting of a representative of the University's multi-media rights contractor shall be requested for the purpose of discussions between the University, P1FCU and the multi-media rights contractor regarding promotional opportunities that may be available to P1FCU in the upcoming fiscal year.

3.5. Audit Rights.

3.5.1. P1FCU shall have the right upon reasonable notice and its own expense to audit the University's performance under this Agreement. In doing so, P1FCU shall have reasonable access to the Dome and Dome Grounds for the purpose of examining Signs, the Dome Logo placement and other displays of the Dome Name and Dome Logos to determine conformance with the terms and conditions of this Agreement. P1FCU shall also have access to other areas of the University as is reasonably necessary to assess conformance with the terms of this Agreement. P1FCU shall also have the right to request copies of all University records relevant to the University's provision of any right or entitlement to P1FCU under the terms of this agreement, and such records shall be provided to P1FCU, subject only to applicable laws governing confidentiality of the University's education and employment records.

3.5.2. In the event P1FCU identifies a material failure to conform to the Agreement, P1FCU shall give written notice of such failure to the University. The University shall promptly correct the failure to conform, or shall, within ten (10) days of receipt of such notice provide P1FCU with the University's explanation regarding conformance and the Parties will engage in good faith discussions to resolve their differences regarding conformance. Any undisputed failure to conform shall be remedied by the University within ten days of receipt of notice from P1FCU, provided however if the remedy requires more than 10 days to remedy, the University shall so notify P1FCU and shall demonstrate diligence and good faith in accomplishing the remedy within a reasonable time.

4. TERM

4.1. The term of this agreement shall commence on the Commencement Date and shall continue for 10 years ("Term"), unless terminated earlier by mutual agreement of the Parties or pursuant to the terms of this Agreement.

4.2. The Parties agree that 180 days prior to the end the Term, if the Agreement has not otherwise been terminated, the Parties shall enter into negotiations to determine whether the Parties can reach mutually agreeable terms to enter into a new naming rights agreement. If the Parties do not reach such an agreement, then at the end of the Term the Parties' rights and obligations under this Agreement shall terminate.

5. CONSIDERATION AND PAYMENT

5.1. P1FCU shall pay, and the University shall accept the sum of Five Million Dollars (\$5,000,000) as consideration for the rights granted by the University to P1FCU.

5.2. Payment from P1FCU to the University shall be made in ten installments:

Payment 1 (Fiscal Year 2024): \$500,000 on January 1, 2024;

Payment 2 (Fiscal Year 2025): \$500,000 on January 1, 2025

Payment 3 (Fiscal Year 2026): \$500,000 on January 1, 2026

Payment 4 (Fiscal Year 2027): \$500,000 on January 1, 2027

Payment 5 (Fiscal Year 2028): \$500,000 on January 1, 2028

Payment 6 (Fiscal Year 2029): \$500,000 on January 1, 2029
Payment 7 (Fiscal Year 2030): \$500,000 on January 1, 2030
Payment 8 (Fiscal Year 2031): \$500,000 on January 1, 2031
Payment 9 (Fiscal Year 2032): \$500,000 on January 1, 2032
Payment 10 (Fiscal Year 2033): \$500,000 on January 1, 2033

6. REPRESENTATIONS AND WARRANTIES

6.1. Each Party hereby represents and warrants:

- 6.1.1. It has full power and authority to enter into this Agreement and perform its obligations hereunder, and that the execution, delivery and performance of the obligations under this agreement by each Party does not, and will not, constitute a violation or a breach of, or constitute a default under (I) any organizational documents of such Party, (2) any applicable law, rule or regulation of a governmental authority binding upon or applicable to such Party, or (3) any material agreements to which such Party is a party;
- 6.1.2. It owns (or licenses) and shall continue to own (or license) and control its respective Marks for all purposes required or necessary to fulfill the terms and conditions of this Agreement; and
- 6.1.3. It will, at all times during the Term, act in accordance with all applicable laws, rules and regulations including without limitation those of the NCAA and any athletic conference to which the University belongs.

6.2. In addition, the University represents and warrants that it shall cause its football, soccer, track and tennis teams to play all home games in the Dome, subject only to inter-sports scheduling conflicts between such University teams.

7. USE OF MARKS

- 7.1. The University shall have the right, at no cost, to use the Marks of P1FCU for the purpose of, and in conjunction with, the University's acknowledgment of P1FCU as the naming sponsor of the Dome and a major contributor to the University.
- 7.2. P1FCU acknowledges and agrees that the University owns its Marks and that, other than is licensed to P1FCU under the terms of this Agreement, any use of University Marks or any other University intellectual property, including trademarked or copyright materials of the University shall be subject to separate licensing arrangements with the University. Any such license or other agreement for use of University intellectual property shall be separate and apart from this Agreement and shall be negotiated between the Parties in the same fashion as other similar University licenses or use agreements.
- 7.3. The University acknowledges and agrees that P1FCU owns its Marks and that, other than is licensed to the University under the terms of this Agreement, any use of University Marks or any other P1FCU intellectual property, including trademarked or copyright materials of P1FCU shall be subject to separate licensing arrangements with P1FCU. Any such license or other agreement for use of P1FCU intellectual property shall be separate and apart from this Agreement and shall be negotiated between the Parties in the same fashion as other similar P1FCU licenses or use agreements.

8. INSURANCE

8.1. PIFCU's Insurance. During the Term, PIFCU shall maintain at its sole cost and expense, the following insurance coverage:

8.1.1. Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence and in the aggregate.

8.1.2. Workers' compensation insurance sufficient to meet all statutory obligations of PIFCU.

8.2. University's Insurance

8.2.1. Subject to the limits of liability specified in Idaho Code 6-901 through 6-929, known as the Idaho Tort Claims Act, the University of Idaho participates in the Risk and Insurance program administered through the State of Idaho. Coverage includes but is not limited to: Property, General Liability, and Auto Liability.

The University of Idaho is self-insured for Workers Compensation.

A Certificate of Financial Responsibility is available upon request to:

Nancy Spink, ARM-E
Risk Manager
University of Idaho
875 Perimeter Dr MS 2285
Moscow, ID 83844-2285
PH (208) 885-6177
risk@uidaho.edu

8.2.2. Use of Insurance Proceeds in the Event of Loss or Destruction of the Dome. In the event of loss or destruction of the Dome during the Term, such that the Dome is rendered unsuitable for, its functions, the University shall apply any insurance proceeds received by University as a result of such loss or destruction to the repair and restoration of the Dome. In the event such loss or destruction of the Dome results in relocation of the University's Athletic Programs and other University events otherwise slated to be held in the Dome, and such relocation equals or exceeds one year from the date of loss or destruction, PIFCU shall be entitled to an extension of the Term for a time period equal to the full time of the relocation of programs and events.

9. DEFAULT AND TERMINATION

9.1. Default by PIFCU. Any one or more of the following events shall constitute a default by PIFCU:

9.1.1. Failure of PIFCU to pay when due the consideration set forth in Section 5 of this Agreement, of any other material sum due from PIFCU when due, if any such failure shall continue for a period of 30 days from the date of written notice from the University to PIFCU setting forth the specific failure, including the amount due, and demanding payment to cure the default.

9.1.2. Failure of PIFCU to perform or comply with any other material term or condition of this Agreement, or a material breach of any representation or warranty made by PIFCU herein, and such failure or breach shall continue for a period of thirty (30) days after written notice from the University to PIFCU, setting forth the specific failure or breach and demanding that it be corrected.

9.1.3. PIFCU i.) applies for or consents to the appointment of a custodian of any kind, whether in bankruptcy, common law or equity proceedings, with respect to all or any substantial portion of its assets; (ii.) becomes insolvent or is unable, or admits in writing its

inability, to pay its debts generally as they become due; (iii.) makes a general assignment for the benefit of its creditors: or (iv.) files a petition seeking relief under the United States Bankruptcy Code, or such a petition is filed by any of its creditors, is approved by a court of competent jurisdiction and such approval is not vacated within 120 days.

9.2. Rights and Remedies of University in the Event of Default by P1FCU. Upon the occurrence of a default by P1FCU, the University shall have the right to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance and (iv) Terminate this Agreement.

9.3. Default by University. Any one or more of the following events shall constitute a default by the University:

9.3.1. Failure of University to pay when due any material sum due from University when due, if any such failure shall continue for a period of 30 days from the date of written notice from the P1FCU to University setting forth the specific failure, including the amount due, and demanding payment to cure the default.

9.3.2. Failure of University to perform or comply with any other material term or condition of this Agreement, or a material breach of any representation or warranty made by University herein, and such failure or breach shall continue for a period of thirty (30) days after written notice from the P1FCU to University setting forth the specific failure or breach and demanding that it be corrected.

9.3.3. The University applies for or consents to the appointment of a custodian of any kind, whether in bankruptcy, common law or equity proceedings, with respect to all or any substantial portion of its assets; becomes insolvent or is unable, or admits in writing its inability, to pay its debts generally as they become due; makes a general assignment for the benefit of its creditors: or files a petition seeking relief under the United States Bankruptcy Code, or such a petition is filed by any of its creditors, is approved by a court of competent jurisdiction and such approval is not vacated within 120 days.

9.4. Rights and Remedies of P1FCU in the Event of Default by University. Upon the occurrence of a default by the University, P1FCU shall have the right to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance and (iv) Terminate this Agreement.

10. MISCELLANEOUS TERMS

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

UNIVERSITY OF IDAHO

University of Idaho
Office of the President
875 Perimeter Drive MS 3151
Moscow, ID 82843-3151

With a copy to:

Office of General Counsel
University of Idaho
875 Perimeter Drive, MS 3158
Moscow, ID 83843-3158

P1FCU

P1FCU
Office of the CEO
1025 Warner Ave.
Lewiston, ID 83501

10.2. Force Majeure. In the event that any Party hereunder is unable to perform or is precluded from performing its obligations under this Agreement due to any unforeseen circumstances beyond the reasonable control of such Party, including, but not limited to, fire, earthquake, explosion or other casualty, riot, or civil commotion, act of government or governmental instrumentality (whether federal, state or local), war, act of terrorism, failure of performance by a common carrier, failure in whole or in part of third party technical facilities (e.g., an Internet hosting company), or act of God (a "Force Majeure Event"), then such inability to perform shall not be deemed to be an P1FCU Default (defined above) or University Default (defined above) hereunder, as the case may be; provided, however, that such Party shall make all reasonable efforts to continue to meet its obligations throughout the duration of the Force Majeure Event and the suspension of any obligations of such Party shall only last during the time the Force Majeure Event continues (and such reasonable time thereafter to allow such Party to respond to such condition.

10.3. Indemnity Clauses.

10.3.1. P1FCU shall indemnify, defend and hold harmless the State of Idaho, and University of Idaho and its governing board, employees, agents, and assigns, from and against any and all claims, losses, damages, injuries, liabilities and all costs, including attorney fees, court costs and expenses and liabilities incurred in or from any such claim, arising from any breach or default in the performance of any obligation on P1FCU's part to be performed under the terms of this Agreement, or arising from any act, negligence or the failure to act of P1FCU, or any of its agents, contractors, employees, invitees or guests. This indemnification does not apply when such claims, damages, and liabilities are the result of negligent acts, errors, omissions or fault on the part of the University, its agents or assigns, or when the claim or suit is made against the University by P1FCU.

Subject to the limits of liability specified in Idaho Code 6-901 through 6-929, known as the Idaho Tort Claims Act, and to laws prohibiting the obligation of future legislative appropriations or the committing of funds beyond an existing appropriation, the University shall indemnify, defend and hold harmless the P1FCU and its governing board, employees, agents, and assigns, from and against any and all claims, losses, damages, injuries, liabilities and all costs, including attorney fees, court costs and expenses and liabilities incurred in or from any such claim, arising from any breach or default in the performance of any obligation on the University's part to be performed under the terms of this Agreement, or arising from any act, negligence or the failure to act of University, or any of its agents, contractors employees, invitees or guests. This indemnification does not apply when such claims, damages, and liabilities are the result of negligent acts, errors, omissions or fault on the part of P1FCU, its agents or assigns, or when the claim or suit is made against P1FCU by the University, the State of Idaho, or any of its agencies. The University's indemnification is limited by operation of law in the following respect. Debts and contract obligations of the University, including those arising from contract indemnification, are not debts or obligations of the

State of Idaho writ large. Recourse for payment of any such obligation may be had against non-appropriated funds of the University in hand at the time such recourse is sought. The State of Idaho has no obligation to appropriate funds for the payment of any such debt or obligation.

- 10.3.1.1. The University's liability coverage is provided through a self-funded liability program administered by the State of Idaho Office of Insurance Management. Limits of liability, and this indemnification, are \$500,000 Combined Single Limits, which amount is the University's limit of liability under the Idaho Tort Claims Act.
- 10.4. Entire Agreement: Modification. This Agreement (and its attachments, if any) constitutes the complete and final integrated understanding between the Parties with respect to the subject matter hereof and may not be amended except by an agreement signed by both Parties.
- 10.5. Severability. The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 10.6. Governing Law; Forum. Any legal proceeding instituted between the parties shall be in the courts of the County of Latah, State of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts. It is further agreed that this Agreement shall be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho.
- 10.7. Non-Waiver. The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.
- 10.8. Assignment. Neither Party may assign the rights or delegate the obligations under this Agreement without prior written consent of the other Party.
- 10.9. Nondiscrimination and Affirmative Action. PIFCU agrees that it shall not discriminate against any employee or applicant for employment in the performance of this Agreement, with respect to tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, age, status as disabled or a veteran, or physical or mental handicaps, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this agreement. PIFCU certifies that it does not, and will not maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, PIFCU agrees to take affirmative action to employ, train, advance in employment, and retain individuals in accordance with applicable laws and regulations including:
 - For nondiscrimination based on race, color, religion, sex or national origin this includes, but is not limited to, the U.S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319). PIFCU disputes related to compliance with its obligations shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (See 41 CFR 60.1.1).
 - For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4012) (the Act); Executive Order 11701, January 24, 1973 (38 CFR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250).
 - For nondiscrimination based on Handicap this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793)(the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 FR

Part 60- 741).

- For nondiscrimination based on Age this includes, but is not limited to, Executive Order 11141, February 12, 1964 (29 CFR 2477). P1FCU shall include the terms of this clause in every subcontract or purchase order exceeding \$50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

10.10. Drafting. Each Party warrants, represents, and agrees that in executing and delivering this Agreement it does so freely and voluntarily, that such Party has consulted with or has had the opportunity to consult with independent counsel of such Party's own choice concerning this Agreement, and that each Party has read and understands this Agreement, is fully aware of its legal effect and has entered into it freely based on such Party's own judgment. Hence, neither this Agreement nor any portion thereof shall be construed against any Party on the basis that such Party was the drafter.

10.11. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, create any interests or rights in or for any persons or entities other than the specific Parties hereto. Any actual benefit accruing to any third party as a result of the terms of this Agreement is merely coincidental, and not, in any fashion, enforceable by such third party against any Party to this Agreement.

10.12. Counterparts; Electronic Format. This Agreement may be executed in two or more counterparts all of which together shall constitute one and the same agreement. Delivery of a copy of this Agreement by facsimile transmission, by electronic mail in "portable document format" ("pdf") form or by any other electronic means that preserves the original graphic and pictorial appearance of a document shall have the same effect as physical delivery of the paper document bearing the original signature.

UNIVERSITY OF IDAHO

P1FCU

BY:
Scott Green, President
DATE:

BY:
Chris Loseth, CEO
DATE:

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
JUNE 21, 2023

SUBJECT

Ampect ARP ESSER SEA Set Aside Funds Proposal

REFERENCE

| | |
|---------------|--|
| October 2021 | Board approved use of ARP ESSER SEA Set Aside funds for the Accountability Oversight Committee's use and an Accelerated Math Collaborative and approved the distribution methodology for 2.5% of the funds for LEA's who receive no or low funds through the US DOE Title I methodology. |
| January 2022 | Board approved allocations of the ESSER SEA Set Aside funds, including: the Dyslexia Handbook; a statewide professional development and mentoring platform; ISEE improvements; and a collaborative between the STEM Action Center, Commission for Libraries, and the Idaho Out-of-School Network to support summer programs and after school programs. |
| February 2022 | Board approved additional allocation of ARP ESSER SEA Set Aside funds to the Summer and After School Collaborative (STEM Action Center, Commission for Libraries, and Idaho Out-of-School Network). |

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code § 33-110
American Rescue Plan Act of 2021, Public Law 117-2

BACKGROUND/DISCUSSION

The federal American Rescue Plan (ARP) Act was enacted on March 11, 2021. It provided a third installment of funding for Elementary and Secondary Emergency Relief, referred to as ARP ESSER. Idaho's original allocation was \$439,942,041; this was later adjusted to \$440,131,920. Of the funds allocated to Idaho, 90% (\$396,118,728) was required to be distributed directly to local education agencies based on the US Department of Education's Title I methodology and 10% (\$44,013,192) could be set aside to be used by the state education agency (SEA). The 10% SEA Set Aside is required to be used in the following manner:

- 5% of total ARP ESSER for implementation of evidence-based interventions aimed specifically at addressing learning loss
- 1% of total ARP ESSER for evidence-based summer enrichment programs
- 1% of total ARP ESSER for evidence-based comprehensive after school programs
- Up to ½ of 1% of total ARP ESSER for administrative costs and emergency needs (\$2,200,660)
- The remainder (at least 2.5%) "for emergency needs as determined by the SEA to address issues responding to coronavirus, which may be addressed through the use of grants or contracts."

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
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An SEA must award ARP ESSER funds not allocated to LEAs within one year of the date the SEA receives those funds.” The funds are available for “obligation” by SEAs and sub-recipients through September 30, 2023.

Idaho Code § 33-110 designates the State Board of Education as Idaho’s SEA.

At Board meetings in October 2021, January 2022, and February 2022, the Board approved allocations for the majority of the SEA Set Aside funds. All of the approved proposals for spending, with the exception of the funding to the non-Title I and low Title I schools, were approved as amounts not to exceed. As actual spending is becoming clear, funds are being released for the Board’s reconsideration on use for other identified priorities in alignment with the ARP ESSER State Plan. The State Plan outlines how the Set Aside funds will be used in alignment with federal law, with particular attention to how the learning loss and emergency funds will be used, as they have more flexibility than the after school or summer school spending. Idaho’s State Plan specifies that the learning loss funds will be used to address pandemic-related student achievement issues that have appeared in early literacy (grades K-4), middle grades math, and high school credit recovery.

The current proposal is for Ampact to place literacy tutors in districts in Region 4 to support accelerated learning for students struggling to gain grade-level literacy skills due to impacts of the pandemic. Ampact is a national non-profit organization that engages AmeriCorps members to implement evidence-based programs supporting three focus areas: education, environment, and healthy futures. They annually engage more than 2,000 AmeriCorps members to serve in communities in 16 states and Washington, D.C.

The proposed Ampact project will be focused on the training and placement of 30 AmeriCorps members in Region 4 school districts in the 2023-2024 school year. Confirmed partners include Twin Falls, Jerome, Hansen, and Camas County. Ampact’s primary goal for its Idaho project is to support partnering districts in improving their K-3 reading proficiency rates. Ampact’s Reading Corps tutors will support K-3 students who are below grade-level targets through one-on-one tutoring during the school day. Students will receive 60 minutes of tutoring per week. Ampact is also hoping to partner with the College of Southern Idaho’s educator preparation program to create pathways for educators with the hope of reducing rural teacher shortages in the region. An Ampact Idaho Reading Corps recruitment flyer with additional information about the program is provided as Attachment 1. Ampact is requesting \$450,000 to support the inaugural year of their Idaho project.

IMPACT

Approval of this request will designate ARP ESSER SEA Set Aside funds for the activities in this proposal and meet the federal requirements around the use of funds. Providing Ampact with the requested funding will also ensure there will be no costs to partnering districts during the 2023-2024 school year.

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
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ATTACHMENTS

Attachment 1 – Ampact Idaho Reading Corps Recruitment Flyer

BOARD STAFF COMMENTS AND RECOMMENDATIONS

The proposed Ampact project is well-aligned to the state’s ARP ESSER Plan and the Board’s focus on accelerating learning in K-4 Literacy to address impacts of the pandemic.

Staff has confirmed that funds are available for this request and that this project fits well within the federal government’s requirements for use of ARP ESSER SEA Set Aside funds. Approval of this request will reduce the amount of undesignated ARP ESSER SEA Set Aside funds. All ARP ESSER SEA Set Aside funds must be designated by September 30, 2023.

Ampact has a long history of successfully placing AmeriCorps members in their Reading Corps program, and staff is confident they have the appropriate infrastructure for a successful launch in Idaho. Per staff communications, Ampact has chosen to pilot their Reading Corps program in one region in the state, with the intention of expanding the program in the future after one to two years of successful implementation in region four. To sustain the program beyond the use of ARP ESSER funds in the launch year, Ampact is currently working to identify potential funding sources to minimize the costs to LEAs that want to work with them. Because Ampact’s Reading Corps is focused on students who are not yet proficient in K-3 reading, LEAs could opt to use state literacy funds to partner with Ampact. Additionally, schools who have been identified for Comprehensive Support and Improvement could choose to use some of their federal 1003 school improvement funds to engage in work with Ampact. Finally, Ampact has developed a relationship with State Department of Education and is engaging in discussions regarding additional possibilities to support the project after ARP ESSER funds are available.

Staff recommends approval.

BOARD ACTION

I move to approve the Ampact request to use ARP ESSER SEA Set Aside funds to place reading coaches in rural, underserved districts for an amount not to exceed the \$450,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Put Your Passion in ACTION



ACTION ACTION ACTION
ACTION ACTION ACTION



Reading Corps works for students!

After a single semester of tutoring, the average kindergarten student in Reading Corps **performs twice as well as their peers.**

Help Idaho kids learn to read – become a reading tutor!

We know that students who are strong readers by the end of 3rd grade are more likely to be successful learners and graduate high school. In Idaho, fewer than a third of our 4th graders are proficient in reading. Together, we can help change this!

Reading Corps trains people to make an impact as tutors. Placed at local schools, our tutors provide one-on-one or paired support to help students become better readers. The extra practice results in incredible growth, and your time makes all the difference. Be part of helping more kids excel at reading – become a reading tutor!

LEARN HOW TO BECOME A TUTOR AT
Join.ReadingandMath.org



QUESTIONS? Call 866-859-2825



Students who read have the power to succeed.

Reading Corps helps kids become stronger readers by training people just like you to be effective reading tutors. No experience is needed; we provide all the training and ongoing support! Our evidence-based program works and has already helped more than 300,000 students nationwide.

As a reading tutor you will:

- Serve in a school setting (full-time and part-time options are available)
- Work one-on-one or with pairs of students who need targeted skills practice
- Conduct tutoring sessions that are 20 minutes long (that's an extra 100 minutes of weekly support for students!)
- Track student progress and regularly meet with the school's on-site coach as well as one of our coaching specialists

Most anyone can make a great tutor. The most important qualification is your passion and desire to make a difference. To review minimum qualifications and additional details, visit us online at Join.ReadingandMath.org.

Idaho Program Partner:



TUTOR PERKS

| | 35 Hr/Wk* | 26 Hr/Wk | 18 Hr/Wk |
|--|-----------|----------|----------|
| Stipend Every two weeks | \$900 | \$650 | \$450 |
| Estimated Education Award By starting month | | | |
| AUG | \$4,826 | \$3,447 | \$2,626 |
| OCT | \$3,447 | \$2,626 | \$1,824 |
| JAN | - | \$1,824 | \$1,459 |
| Federal Student Loan Forbearance & Interest Repayment | Yes | Yes | Yes |
| Health Insurance Monthly premium 100% covered | Yes | No | No |
| Child Care Assistance Based on family size and income | Yes | No | No |

SCHEDULE All schedules are Monday-Friday.

| SERVE | APPLY |
|--------------------------|-------------------|
| August 2023 - June 2024 | July 26, 2023 |
| October 2023 - June 2024 | October 4, 2023 |
| January 2024 - June 2024 | December 13, 2023 |

*No 35-hour/week positions available for tutors beginning service in January 2024.

LEARN HOW TO BECOME A TUTOR AT
Join.ReadingandMath.org

QUESTIONS? Call 866-859-2825



Ampact will not discriminate for or against any AmeriCorps service member or applicant on the basis of race, color, creed, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, familial status, military service, or any other category protected by law. Reasonable accommodations provided upon request. This document is available in alternative formats.