



**MONDAY, APRIL 22
3–5 P.M.**

Governance Committee Meeting

NORTH END ZONE PROJECT

Designed to solve several structural issues with Albertsons Stadium while elevating the student-athlete and fan experience, the North End Zone Project will infill existing north end bleacher seating with approximately 1,500 premium seats, including field-level suites, loge boxes, and club seats to offer uniquely immersive and comprehensive game day experiences.

The multi-use space will also serve as a dining room and nutrition center for all student-athletes to provide the fuel and education they need to best position them for success on and off the field.

The project will improve the gameday experience for all fans by producing wider concourses to increase ingress and egress efficiency, added restrooms, more concession stands, and give Albertsons Stadium its first-ever 360-degree concourse.

Updating and enhancing athletics facilities ensures that Boise State student-athletes have access to state-of-the-art resources, creating an environment that promotes their physical, mental and professional development, fosters their competitive spirit and fuels their drive for success.



Scan the QR code to learn more.

UNBRIDLED

The Campaign *for* Boise State University



**BOISE STATE UNIVERSITY
FOUNDATION**

GOVERNANCE COMMITTEE MEETING

Monday, April 22, 2024, 3 p.m.

AFC Room 406/Hybrid

[Join Zoom Meeting](#)

AGENDA

I. Call Meeting to Order	Debbie Flandro
II. Approval of Minutes from January 22, 2024 [VOTE]	Debbie Flandro
III. FY25 Slate of Officers & Directors	Debbie Flandro
IV. Board Mentoring Program	Debbie Flandro
V. Orientation Update	Alison Bilgic
VI. Merger Update and Operating Agreement [VOTE]	Paul Powell
VII. Board Assessment	Alison Bilgic
VIII. Other Business	Debbie Flandro
IX. Executive Session (if needed)	Debbie Flandro
X. Adjournment	Debbie Flandro

**The next Foundation Board of Directors meeting is 5/10/2024, 9:30 a.m. - 1 p.m., AFC Ballroom/Zoom,
Foundation Board Social is 5/10/2024, 5:30 p.m., Bleymaier Football Center
Governance Committee meeting is 7/24/2024, 3 - 5 p.m., AFC 406/Zoom.**



**BOISE STATE UNIVERSITY
FOUNDATION
GOVERNANCE COMMITTEE MEETING**

**Monday, January 22, 2024, 3 p.m.
AFC Room 406/Hybrid**

Meeting Minutes

Directors Present

**Debbie Flandro, Committee Chair
Chuck Hallett, Darren Kyle, Jim Martin, Bruce Mohr,
Rick Stacey, Glen Walker, Matt Wolff**

Staff Attendees

Matthew Ewing, Paul Powell, Alison Bilgic

I. Call Meeting to Order

Debbie Flandro called the meeting to order.

II. Approval of Minutes from October 23, 2023 [VOTE]

Ms. Flandro called for a motion to approve the minutes from October 23, 2023.

Motion by Bruce Mohr

Second by Glen Walker

Approved by unanimous vote

III. Director Prospect Shortlist

The committee reviewed the status of prospect outreach and discussed next steps.

Action: Ms. Bilgic will schedule lunches with Cole Clinger, Tara Martens Miller, David McFadyen, and Christina Moore Ward with the intention of setting clear expectations, answering questions, and extending an invite to join the board.

Action: Open ended conversations will continue with other prospects.

IV. Confidentiality Policy [VOTE]

Alison Bilgic highlighted the changes that were made to the Confidentiality Policy; namely including the Acknowledgement and Agreement to the policy as Appendices rather than separate documents. The policy was under legal review.

Motion by Bruce Mohr to approve pending attorney review to approve and recommend the Updated Confidentiality Policy to Executive Committee

Second by Glen Walker

Approved by unanimous vote

Action: Once the policy is fully reviewed and approved Ms. Bilgic will obtain new signatures from the Board and any additional employees, or non-employees who have access to confidential information.

V. Operating Agreement [VOTE]

Mr. Powell reviewed the Redline draft of the Operating Agreement and highlighted that this draft was based on the Operating Agreement changes Uofl put forward to the State Board and redlined against our existing Operating Agreement approved in 2021. He noted that the biggest changes were changing the primary relationships under the new proposed structure, and encompassing a fee for service model.

In depth review and discussion followed emphasizing the importance of key language and clear definitions of roles and responsibilities.

No vote was taken.

Action: Additional review, edits, discussion and approvals are needed. This may require a special session of the committee.

Mr. Powell also shared the updated timeline, noting that this was only a first read and discussion, and that it is still under attorney review.

VI. MANE Link Access (demo)

Alison Bilgic provided an overview of the new Board Portal; how to get access and what resources to expect. She encouraged committee members to set up their logins, review their bios, and send her any suggestions for changes to either the bio, or the site in general.

Action: Alison Bilgic will send usernames and guidance doc for accessing the site, and we will review again for feedback on what folks want to see at our April Governance Committee meeting.

VII. Other Business

No other business was presented.

VIII. Executive Session

Executive Session was not needed.

IX. Adjournment

Debbie Flandro adjourned the meeting.

Minutes Approved:

Debbie Flandro, Committee Chair

Governance Committee meeting is 4/22/2024, 3 - 5 p.m., AFC 406/Zoom.



**BOISE STATE UNIVERSITY
FOUNDATION**

Proposed FY2025 Slate of Officers and Directors

Officers

- **Executive Chair:** Jim Martin
- **Vice Chair:** Bruce Mohr
- **Treasurer:** Brian Yeargain
- **Secretary:** Rick Pedigo
- **Immediate Past Chair:** Brandy Stemmler

Executive Committee

- **Chair:** Jim Martin
- **Vice Chair:** Bruce Mohr
- **Treasurer/Finance Chair:** Brian Yeargain
- **Secretary:** Rick Pedigo
- **Immediate Past Chair:** Brandy Stemmler
- **Governance:** Debbie Flandro
- **Investment:** Mike Mers
- **Campaign:** Randy Hales
- **At Large (Real Estate):** Zach Higgins
- **At Large:** Jennifer Seamons
- **At Large:** Royanne Minskoff

Directors for Re-Election

- **Member (3rd term):** Richelle Sugiyama
- **Member (3rd term):** Glen Walker
- **Member (2nd term):** Kenny Bolton
- **Member (2nd term):** Korey Hall
- **Member (2nd term):** Zach Higgins
- **Member (2nd term):** Royanne Minskoff
- **Member (2nd term):** Ryan Relyea
- **Member (2nd term):** Rick Stacey
- **Member (2nd term):** Brian Yeargain

New Directors

- **Member (1st term):** Cole Clinger
- **Member (1st term):** Tara Martens Miller
- **Member (1st term):** David McFadyen
- **Member (1st term):** Christina Moore Ward

Honorary

- **Alumni Association:** Vice President (TBD)
- **BAA:** Immediate Past President (Jason Coronado)



**BOISE STATE UNIVERSITY
FOUNDATION**

Board Mentoring Program

Purpose

To assist and support the acclimation of directors during their first year of board service, by assigning a current director to serve as their mentor.

Program Details

In addition to initiating conversations, a welcome letter, an orientation, and access to board materials, all designed to provide clear expectations and guide new board members into their service, the Governance Committee will assign a mentor.

This mentor should be an established board member who either has an existing personal connection, or who serves on a committee where the new board directors shows a particular interest.

Expectations of Mentor

- Attend mentee's orientation if schedule permits.
- Contact mentee prior to their first board meeting to offer guidance.
- Keep in close contact with mentee during their first few meetings and follow up after to answer questions and assure a comfortable acclimation onto the board.
- Foundation staff will assure that new directors are seated with their mentors at board meetings and special events.
- Participate in mid-year check in with a Governance Committee member.

Expectations of Mentee

- Communicate with mentor.
- Take an active role in the process and approach the mentor at any time with questions or concerns.
- Participate in mid-year check in with a Governance Committee member.

DIRECTOR ORIENTATION
Friday, June 14, 2024 9:00 a.m. – 5:00 p.m.
Alumni and Friends Center

AGENDA

9-11 A.M.	JOINT SESSION	
9:00 A.M.	Welcome & University Updates (20 mins)	Dr. Marlene Tromp
9:20 A.M.	Vision for Advancement at Boise State (10 mins)	Matthew Ewing
9:30 A.M.	The “Big A” (60 mins) University Development Advancement Services Alumni & Constituent Engagement Foundation Boise State Alumni Association Bronco Athletic Association	Argia Beristain Joseph Boeke David Johnston Paul Powell Lisa Gardner Cody Gougler
10: 30 A.M.	Campaign Highlights (30mins)	Matthew Ewing
11:00 A.M.	CONCURRENT BOARD SPECIFIC SESSIONS (60 mins)	
	A. Foundation Board Structure & Expectations Governance Committee Campaign Committee Investment Committee Finance and Audit Committee Board Support, Communication, & Resources	Paul Powell Debbie Flandro Randy Hales Mike Mers Brian Yeargain Alison Bilgic
	B. Alumni Association Board Structure & Expectations Committees & Staff Board Support, Communication, & Resources	Abbie Belthoff / Tamara Thompson Lisa Gardner / Abbie Belthoff Lauryn Essary / Rachel Fregulia
	C. Bronco Athletic Association Board Structure & Expectations Membership Committee	BAA President Committee Chair
12:00 P.M.	LUNCH	
1-5P.M.	ALUMNI BREAKOUT SESSIONS	



BOISE STATE UNIVERSITY

Operating Agreement between the Foundation and University

Matthew Ewing, VP for University Advancement

Paul Powell, Executive Director, Boise State University
Foundation



VISION FOR INTEGRATION

Creating a **unified philanthropic enterprise** will position Boise State University and Boise State University Foundation to create the best culture of philanthropy and alumni engagement of any public university in the country.



GUIDING PRINCIPLES OF INTEGRATION

- Boise State Foundation will remain fully independent and a separate organization.
 - Fiduciary controls for the Foundation will reside with the Foundation Board.
 - CEO for the Foundation will report to and be directed by the Foundation Board.
- All Foundation staff will be loaned employees reporting to the Foundation Board.
- Fundraisers will maintain robust partnerships with deans/colleges/units.
- Annual planning will be done jointly between Foundation and University aligning Foundation fundraising goals with University priorities including coordinated donor stewardship.
- Aligning organizations will allow for best practices (both current and future), resiliency and strong internal controls.
- Integrating the Foundation and University Advancement institutionalizes the integrated advancement model we have created over the last three years.
- Integrating the Foundation and University Advancement does not incur additional costs.
- Maintaining 501(c)3 status will help ensure donor privacy and sensitive data protection.



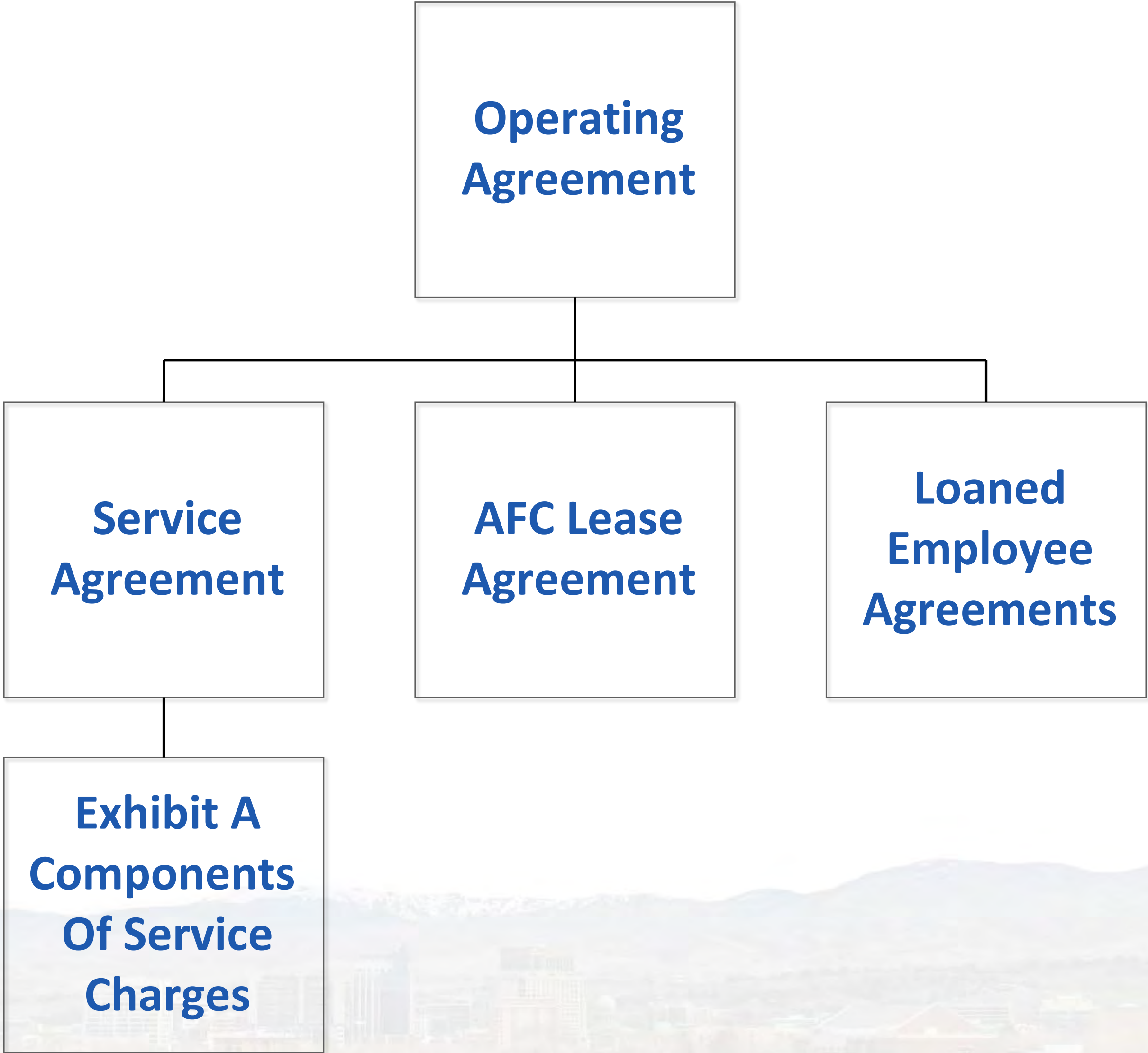
CURRENT CASH FUNDING MODEL

FY24 Budget	University Advancement		Foundation	Total
	University Funded	Foundation Funded	Operations	
Salaries & Fringe	\$ 3,080,000	\$ 2,775,000	\$ 560,000	\$ 6,415,000
Operating Expenses	\$ 120,000	\$ 625,000	\$ 810,000	\$ 1,555,000
Total Expenses	\$ 3,200,000	\$ 3,400,000	\$ 1,370,000	\$ 7,970,000
Fundraising Goal	\$ 50,000,000			
University Cents/Dollar Raised	\$ 0.064			
Foundation Cents/Dollar Raised	\$ 0.095			
Total Centes/Dollar Raised	\$ 0.159			

- University services not currently charged to units such as HR, Payroll Support, OIT, Rent, etc. would add about \$.02/dollar raised.



AGREEMENT STRUCTURE



OPERATING AGREEMENT

- Starting point is the SBOE Template Operating Agreement that essentially mirrors the SBOE policies regarding university affiliated foundations.
- SBOE must approve changes before the University can sign the agreement.
- The Operating Agreement defines the relationship, roles and responsibilities of the University and Foundation.
- Our last Operating Agreement was signed in January 2021.
- 2024 Operating Agreement changes:
 1. Reflect integrated Foundation organization and University relationships.
 2. Defines University Services and Foundation services to create an arms length transaction.
 3. Adds a more cooperative planning and budgeting process to determine service charges.
- Related agreement such as the Service Agreement, Lease Agreement and Loaned Employee Agreements don't require SBOE approval.



SERVICE AGREEMENT

- Details the arms length transaction by identifying key services exchanged.
- Remain relatively cash neutral to both parties.
- Only cash difference is Foundation pays about \$750k of UA operating expense in exchange for University absorbing \$560k of Foundation loaned employee expense.
- The process is to bookkeep service charges all year and do an annual reconciliation by June 30.
- Foundation Service Charge may not exceed University Service Charge.
- If University Service Charge exceeds the Foundation Service Charge, the Foundation pays University the difference.
- University President and Foundation CEO determine annual Fundraising Goal. They may annually negotiate changes to each component of University Service Charge +/- 5% without requiring approval of SBOE and Foundation Board.
- Foundation Net Income remains available to support University.



UNIVERSITY SERVICES PROVIDED

- Loaned Employee Pay and Benefits
- Payroll Processing
- Accounts Payable (expense reimbursement and P-cards)
- Human Resources
- OIT Services
- Rent
- Travel Support
- Mail Services



PROPOSED MOTION

“Move to recommend approval of the 2024 Operating Agreement in substantially the form as presented subject to approval by the State Board of Education and that any material changes must be approved by the Executive Committee.”



Foundation and Advancement: Budget Illustration

	FY2024 Foundation Budget	FY2024 New Structure Illustration
Revenue		
Advancement Assessment	\$ 1,966,511	\$ 1,966,511.0
Advancement Fee	\$ 1,250,000	\$ 1,250,000.0
Restricted/Unrestricted Earnings	\$ 1,269,000	\$ 1,269,000.0
Contributions and Miscellaneous Income	\$ 5,000	\$ 5,000.0
Payout from Quasi Endowments	\$ 219,880	\$ 219,880.0
Payout from Brown Funds	\$ 122,210	\$ 122,210.0
Foundation Service Charge	\$ -	\$ 10,000,000.0
Total Revenue	\$ 4,832,601	\$ 14,832,601.0
Existing Operating Expenses		
Reimbursed Salaries	\$ 420,099	
Reimbursed Fringe Benefits	\$ 139,746	
Office operating costs	\$ 13,050	\$ 13,050.0
Staff support costs	\$ 16,500	\$ 16,500.0
Purchased Services	\$ 59,800	\$ 59,800.0
Cultivation and Stewardship costs	\$ 17,500	\$ 17,500.0
Software and Services	\$ 540,000	\$ 540,000.0
Equipment Costs	\$ 3,500	\$ 3,500.0
Travel Costs	\$ 8,000	\$ 8,000.0
Foundation Grants	\$ 15,000	\$ 15,000.0
Board Expense	\$ 47,300	\$ 47,300.0
Credit Card and Bank Fees	\$ 90,000	\$ 90,000.0
	\$ 1,370,495	\$ 810,650.0
UA Operating Expenses	\$ -	\$ 745,000.0
Foundation Funding to University	\$ 3,462,106	\$ -
Subtotal	\$ 4,832,601	\$ 1,555,650.0
University Service Charge		
Loaned Employee Payments		\$ 6,415,000.0
College and Unit Development Costs		\$ 358,231.0
Operations Support Costs		\$ 110,000.0
Rent		\$ 742,500.0
Subtotal	\$ -	\$ 7,625,731.0
Additional Operating Costs Due to Transition		
Additional Insurance		
Subtotal	\$ -	\$ -
Total Expenses	\$ 4,832,601	\$ 9,181,381.0
Reconciliation of Service Charges		\$ (2,374,269.0)
Net Surplus/(Deficit)	\$ -	\$ 3,276,951.0

\$0.20 x \$50M = \$10M, but reconciled to University Service Charge

\$560k Salaries & Fringe moved to University Service Charge

UA Operating Expenses moved to Foundation
Determined based on Surplus

Current UA & BSUF Personnel Included in College/Unit budgets

33,000 sq.ft. x \$22.50 if included

\$0.18 x \$50M

Univ. Charge - Foundation Charge

Available for University

2024 OPERATING AGREEMENT
BETWEEN
BOISE STATE UNIVERSITY FOUNDATION, INC.
AND
BOISE STATE UNIVERSITY

This 2024 Operating Agreement (“Operating Agreement”) between Boise State University Foundation, Inc. (“Foundation”) and Boise State University (“University”) is entered into effective the 1st day of July, 2024 (“Effective Date”), and is an amendment and restatement of the Operating Agreement entered into on January 14, 2021 (“Prior Operating Agreement”), which it fully replaces. The University and the Foundation are sometimes referred to herein separately as a “Party” and collectively as the “Parties”.

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 policies 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. **Liaisons.**

a. University Liaison: The University's President ("University President") shall serve as the University's Liaison to the Foundation ("University Liaison"). The duties and responsibilities of the University Liaison, which may be delegated by the University Liaison, include the following:

- i. The University Liaison shall be responsible for communicating with the Foundation regarding the Foundation's fundraising efforts and for coordinating the administrative support provided by the University to the Foundation.
- ii. The University Liaison shall be invited to attend each meeting of the Foundation's Board of Directors ("Foundation Board") as a non-voting advisor. The University Liaison will provide regular reports to the Foundation Board about the University's financial position and activities, including its use of gifts. The University Liaison may also report other information to the Foundation Board that is pertinent to the common goals of the University and the Foundation.
- iii. The University Liaison will work with the Foundation to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

b. Foundation Liaison: The Chief Executive Officer of the Foundation ("Foundation CEO") will serve as the Foundation's liaison to the University ("Foundation Liaison"). The duties and responsibilities of the Foundation Liaison, which may be delegated by the Foundation Liaison to a designee, include the following:

- i. The Foundation Liaison shall be responsible for communicating with the University regarding the Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.
- ii. The Foundation Liaison may attend University leadership meetings as a non-policy making advisor. The Foundation Liaison will provide regular reports to the University about the Foundation's financial position and activities. The Foundation Liaison may also report other information to the University that is pertinent to the common goals of the University and the Foundation.

- iii. The Foundation Liaison will work with University leadership to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

2. Loaned Employees.

a. Foundation CEO: The Foundation CEO is an employee of the University who is loaned to the Foundation. The Foundation CEO's services shall be provided directly to the Foundation as follows and as set forth in the applicable Loaned Employee Agreement (as defined below):

- i. Duties. The Foundation CEO is responsible for the strategy and planning for and the supervision and control of the day-to-day operations of the Foundation.
- ii. Reporting Structure. The Foundation CEO reports to and takes direction from the Foundation Board. All other Loaned Employees (as defined below) report to the Foundation CEO or another Loaned Employee designated by the Foundation CEO.
- iii. Vacancy. In the event the Foundation CEO resigns or is terminated by the University, the Foundation terminates the Foundation CEO's Loaned Employee Agreement or the Foundation CEO otherwise ceases to provide services to the Foundation, hiring of the subsequent Foundation CEO shall be done in accordance with Foundation and University policies and applicable law.

b. Generally. The Foundation and the University have entered and will enter into additional agreements (each such agreement, a "Loaned Employee Agreement") for the loaning of Loaned Employees (as defined below) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation. The Foundation must provide the University with prior approval to: (a) post any position for hiring and (b) hire any employee that the Foundation and the University intend to be a Loaned Employee before the University employs such individual. Notwithstanding the provisions of the section, no University personnel other than a Loaned Employee shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Loaned Employees. For purposes of this Operating Agreement, "Loaned Employee" means all positions for which the Foundation and University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to the Foundation by the University for the entire 12 months of the fiscal year and the Foundation's budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year.

3. University Services. As set forth in greater detail in the Service Agreement by and between the Foundation and the University (“Service Agreement”), the University shall charge the Foundation (“University Service Charge”) to provide administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring), information technology support services (including software as a service, incident management, hardware installation and maintenance), mail services, and communication, publication and marketing professional services to the Foundation (collectively “University Services”). Except as specifically provided otherwise herein or in the Service Agreement, all University personnel who provide support services to the Foundation shall remain University personnel under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a written Loaned Employee Agreement.

4. University Service Charge.

- a. University Service Charge Formula. The University Service Charge shall be calculated as follows:

$$\begin{aligned} & \text{University Service Charge} \\ & = \\ & \text{Loaned Employee Payments} + \text{College and Unit Development Costs} + \\ & \text{OIT Costs} + \text{Operations Support Costs} + \text{Rent} \end{aligned}$$

- b. Components of University Service Charge. Each of the components of the University Service Charge and the defined terms used in defining those components are defined as follows:

- i. “Loaned Employee Payments” means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.
- ii. “College and Unit Development Costs” means Loaned Employee Payments and related development expenses agreed to be paid by Colleges or Units.
- iii. “OIT Costs” means the Office of Information Technology (“OIT”) budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number

of employees of the University, including the Loaned Employees, during the fiscal year.

iv. “Operations Support Costs” means the sum of Payroll Support Costs and HR Costs, which are defined as follows:

1) “Payroll Support Costs” means the product of (a) Payroll Support Amount as defined in the Service Agreement, (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

2) “Accounts Payable Costs” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by Accounts Payable Amount as defined in the Service Agreement and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

3) “HR Costs” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

v. “Rent” means the square feet of the leased premises multiplied by Rental Rate for the fiscal year as defined in the Service Agreement.

c. Changes to Components of University Service Charge.

i. Generally. For the fiscal year commencing July 1, 2025 (“FY26”) or any fiscal year after FY26, each of the College and Unit Development Costs, OIT Costs, Payroll Support Amount and Rental Rate (each a “Component”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

ii. Discontinuation of Services. If all services provided by the University to the Foundation in connection with any of the terms defined in Article III Section 4.b are discontinued in their entirety, then the defined term associated with such services discontinued shall be

removed from the formula for calculating the University Service Charge set forth in Article III Section 4.a.

5. Foundation Services. As set forth on greater detail in the Services Agreement, the Foundation shall charge the University (“Foundation Service Charge”) to provide asset management, investment, fundraising, alumni relations and certain information technology services to the University (collectively, “Foundation Services”).

6. Foundation Service Charge.

a. Foundation Service Charge Formula. The Foundation Service Charge shall be calculated as follows:

$$\begin{array}{c} \text{Foundation Service Charge} \\ = \\ \text{Cost to Raise a Dollar x Fundraising Goal} \end{array}$$

b. Components of Foundation Service Charge. For purposes of the formula set forth in Article III Section 6, the cost associated with Foundation’s fundraising efforts to raise one dollar (“Cost to Raise a Dollar”) shall be the CRD Amount as defined in the Service Agreement, which is based on current industry standards. The Foundation CEO and the University President shall collaboratively develop a list of vital goals (“Vital Goals”) that shall include a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year (“Fundraising Goal”).

c. Changes to Components of Foundation Service Charge.

i. CRD Amount. For FY26 or any fiscal year after FY26, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and the University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year’s CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year’s CRD Amount.

ii. Appropriations Holdback. In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences, the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. The Foundation may modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation’s discretion, to accommodate the reduction in the Foundation Service Charge pursuant to the process set

forth in the Service Agreement, which will include adequate notice to the Parties and documentation of the changes.

7. **Process for Reconciliation.** The process of reconciling the University Service Charge and the Foundation Service Charge will be set forth in the Service Agreement. Pursuant to the terms of the Service Agreement, the Foundation shall, after the reconciliation process is complete, make a payment to the University in an amount equal to the net of the University Service Charge and the Foundation Service Charge if the net amount is owed by the Foundation to the University. In no event will the University be required to make a payment to the Foundation.

8. **University Facilities and Equipment.** The University shall provide the use of certain University office space and equipment to the Foundation upon terms of use set forth in the AFC Lease Agreement by and between the Foundation and University (“AFC Lease Agreement”). The Rental Rate for the Foundation’s use of facilities under the AFC Lease Agreement shall be set forth in the Service Agreement.

9. **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. **Form of Solicitation.** All Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax-exempt 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 Board.

b. *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 Service Agreement.

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

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 Board may determine in the Foundation 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 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 Loaned 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 A and incorporated herein; 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 and upon such notice, Exhibit A shall be replaced with the updated investment policy.

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 the University.

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. The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws and Foundation policies and guidelines. In addition, upon request of the Foundation, the University shall execute a confidentiality agreement and instruct its employees and agents that all confidential information of the Foundation shall be protected from disclosure. Except as specifically authorized under this Operating Agreement or any applicable confidentiality agreement between the University and the Foundation, the University's access to Foundation records shall not include the donor database and all other data, materials and information of the Foundation pertaining to past, current or prospective donors ("Confidential Donor Information"), which may be accessed only by Loaned Employees.

2. Records Management.

a. Protection of Confidential Donor Information. The Parties recognize that the records of the Foundation relating to actual or potential donors contain Confidential Donor Information. The Foundation owns and controls the Confidential Donor Information. The Confidential Donor Information is proprietary to the Foundation and constitutes confidential information and trade secrets. The Foundation is responsible for monitoring and controlling access to the Confidential Donor Information and protecting the security of the Confidential Donor Information. Accordingly, in providing information technology services, including data security and incident management, to the Foundation, OIT will comply with (a) the Foundation's data

security plan, (b) all Foundation policies and procedures regarding the access, use disclosure, retention, deletion and processing of the Confidential Donor Information and (c) the security principle of least privilege to ensure that the security architecture is designed such that each OIT personnel is granted the minimum system resources and authorizations needed to perform the information technology support services for the Foundation.

b. **Maintenance of Records.** 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, Confidential Donor Information and all other Foundation records as required by applicable laws.

c. **Inapplicability of State Laws.** The Foundation 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, including the Idaho Open Meetings Law and Public Records Act. Nothing in the Operating Agreement shall be construed as a waiver of the Foundation's right to assert these statutes do not apply to the Foundation as a separate charitable entity.

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.** Each Party hereby grants the other a non-exclusive, royalty-free, nonsublicensable, nontransferable license to use the trademarks of the other Party, specifically: "Boise State University" and "Boise State University Foundation, Inc." (the "Licensed Marks") solely in connection with activities conducted in association with or for the benefit of the other Party. The foregoing notwithstanding, no rights are granted to a receiving Party to obtain in that Party's name domain names or social media incorporating the Licensed Marks. Neither Party may delegate, assign or sublicense the rights granted hereunder without express prior written consent from the other Party. All goodwill arising from a Party's use of the Licensed Marks shall inure to the benefit of the granting Party. Each Party shall adhere to the granting Party's strict quality control standards relative to use of the Licensed Marks and shall submit, upon the granting Party's request, exemplars of use to permit the granting Party to verify the other Party's compliance herewith. Neither party shall use the Licensed Marks to disparage the granting Party in any way, or in a manner that may tarnish or dilute the granting Party's trademark rights. Each granting Party reserves the right to terminate this license on 60 days' notice in consequence of the other Party's noncompliance herewith, subject to the other Party's curing the breach within such 60-day period.

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.** After the Parties have completed the process described in the Service Agreement related to forecasting the Foundation Service Charge and the University Service Charge for the next fiscal year and prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any) as approved by the Foundation Board . Any

of the University's funding requests to the Foundation shall be communicated in writing by the University President to the Foundation CEO by April 1 of each year.

6. 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.

7. 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. The Foundation shall have an annual financial 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 auditing standards generally accepted in the United States of America (GAAS). 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 GAAS 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 Confidential Donor Information 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 Loaned 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.

5. Reports to University Leadership. The Foundation will provide regular reports to certain University leadership (including the University President and Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. Foundation leadership, including the Foundation CEO and Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information, which will remain in the possession of the Foundation. At the end of the fiscal year, the Executive Chair of the Foundation Board and the Foundation CEO will meet with the University President to assess the Foundation's success and areas for improvement.

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 B. The Foundation shall provide the University any updates to the Foundation's conflict of interest policy, and upon such notice, Exhibit B shall be replaced with the updated conflict of interest policy.

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. Term. The initial term of this Operating Agreement shall commence on the Effective Date and end on June 30, 2027 ("Initial Term"), and thereafter, this Operating Agreement shall automatically renew for successive three-year terms (each a "Renewal Term" and, together with the Initial Term, "Term"), unless and until terminated in accordance with the terms and conditions contained in this Operating Agreement.

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 Foundation CEO and the University President. If the Foundation CEO 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 as required by the then applicable State Board's Policies and Procedures (currently, Section V.E.) and as 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 Documents 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:

General Counsel
Boise State University
1910 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:

Foundation CEO
Boise State University Foundation
1173 University Drive
Boise, Idaho 83706

10. No Joint Venture. Notwithstanding anything to the contrary in this Operating Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. 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 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; Required Certification. This Operating Agreement shall be governed by the laws of the State of Idaho.

University is prohibited by state law from entering into certain contractual agreements. Foundation hereby certifies that: (i) pursuant to Idaho Code Section 67-2346, if it is a company, the total value of the contractual agreement exceeds one hundred thousand dollars(\$100,000), and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; (ii) pursuant to Idaho Code Section 67-2359, if it is a company, it is not currently owned or operated by the People's Republic of China led by the Chinese communist party and will not for the duration of the Agreement be owned or operated by the People's Republic of China; and (iii) except to the extent this Agreement is a contract or commercial transaction that is subject to a federal law related to Medicaid or a contract with a hospital as defined in Idaho Code, Section 39-1301, it is not an abortion provider or an affiliate of an abortion provider under the No Public Funds for Abortion Act. The terms in this paragraph defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. This certification is made solely to comply with the Idaho statutes referenced herein and to the extent such section does not contravene applicable State or federal law.

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 and the agreements contemplated to be entered into by the Parties under this Operating Agreement, which are (a) the Service Agreement, (b) AFC Lease Agreement, and (c) Loaned Employee Agreements (collectively with this Operating Agreement, ("parties' Agreements")), constitute the entire agreement among the Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements, the provisions of this Operating Agreement shall control.

This Operating Agreement amends, restates and replaces the Prior Operating Agreement 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: _____

Name: Marlene Tromp

Its: President

Date: _____

BOISE STATE
UNIVERSITY FOUNDATION, INC.:

By: _____

Name: Jim Martin

Its: Executive Chair of the Board of Directors

Date: _____

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

EXHIBIT “A”
INVESTMENT POLICY

EXHIBIT “B”

CONFLICT OF INTEREST POLICY

2024 SERVICE AGREEMENT

This 2024 Service Agreement (“**Agreement**”) is entered into effective the 1st day of July, 2024 (“**Effective Date**”) by and between Boise State University, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the Boise State University Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”). The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties**.”

ARTICLE I

BACKGROUND

1.1 **Background.** The Foundation is the primary affiliated foundation responsible for assisting the University in soliciting, managing and distributing private support for the University. The Parties desire to document the services provided by each Party to the other Party and the corresponding charges for such services.

1.2 **Loaned Employees.** The University and the Foundation have entered and will enter into additional agreements (each such agreement, a “**Loaned Employee Agreement**”) for the loaning of Loaned Employees (as defined in Exhibit A) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University with respect to the Loaned Employees. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation.

ARTICLE II

SERVICES

2.1 **University Services.** The University shall provide the following services to the Foundation in accordance with the terms of this Agreement: administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation (collectively, “**University Services**”).

2.2 **Foundation Services.** The Foundation shall provide the following services to the University in accordance with the terms of this Agreement: asset management, investment, fundraising, alumni relations and certain information technology services (collectively, “**Foundation Services**” and, together with the University Services, “**Services**”).

ARTICLE III

SERVICE CHARGES

3.1 **University Service Charge.** The University will charge the Foundation for the University Services (“**University Service Charge**”) provided by the University each fiscal year. The University Service Charge shall be calculated as follows:

$$\begin{aligned} &\text{University Service Charge} \\ &= \\ &\text{Loaned Employee Payments} + \text{OIT Costs} + \text{Operations Support Costs} + \\ &\text{Rent} \end{aligned}$$

3.1.1 **Components of University Service Charge.** Each of the components of the University Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto, which is incorporated herein by this reference.

3.1.2 **Changes to Components of University Service Charge.** Certain components of the University Service Charge may be adjusted pursuant to the terms of this Section 3.1.2 prior to the beginning of each fiscal year. Any adjustment to the following components of the University Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Chief Executive Officer of the Foundation (“**Foundation CEO**”) and President of the University (“**University President**”).

3.1.2.1 **Generally.** For the fiscal year commencing July 1, 2025 (“**FY26**”) or any fiscal year after FY26, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “**Component**”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the Idaho State Board of Education (“**State Board**”) or the Foundation’s Board of Directors (“**Foundation Board**”); and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.1.2.2 **Discontinuation of Services.** If any of the Services provided by the University to the Foundation are discontinued in their entirety and such discontinued Services comprise all Services described in a term defined on Exhibit A, then the defined term associated with such discontinued Services shall be removed from the formula for calculating the University Service Charge set forth in Section 3.1.

3.2 **Foundation Service Charge.** The Foundation will charge the University for the Foundation Services (“**Foundation Service Charge**” and, together with the University Service Charge, the “**Service Charges**”) provided by Foundation each fiscal year. The Foundation Service Charge shall be calculated as follows:

$$\begin{aligned} &\text{Foundation Service Charge} \\ &= \\ &\text{Cost to Raise a Dollar} \times \text{Fundraising Goal} \end{aligned}$$

3.2.1 Components of Foundation Service Charge. Each of the components of the Foundation Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto.

3.2.2 Changes to Components of Foundation Service Charge. The following component of the Foundation Service Charge may be adjusted pursuant to the terms of this Section 3.2.2 prior to the beginning of each fiscal year. Any adjustment to the following component of the Foundation Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Foundation CEO and the University President.

3.2.2.1 CRD Amount. For FY26 or any fiscal year after FY26, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year's CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year's CRD Amount.

3.2.3 Appropriations Holdback. In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences ("**Appropriation Holdback**"), the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. Upon the occurrence of an Appropriation Holdback, the University will provide prompt written notice to the Foundation of the amount of the Appropriation Holdback and the Foundation may, within 30 days of receipt of such written notice, modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge and will promptly provide written notice to the University of such modification or reduction if any.

3.3 Charges for Services. The Party providing the applicable Services shall charge the other Party for such Services in the amounts calculated pursuant to this Article III and payment for the Services shall be pursuant to Section 3.4. The Service Charges shall constitute full compensation to each Party for all charges, costs and expenses incurred by the other Party in providing the applicable Services, unless otherwise specifically agreed to in writing between the Parties.

3.4 Reconciliation of Service Charges.

3.4.1 Net Service Charge. Each Party shall charge the other Party for the Services rendered by the providing Party under this Agreement. At least 30 days prior to the end of each fiscal year, each Party shall aggregate all Service Charges owed to such Party by the other Party for all Services performed or to be performed during the current fiscal year and shall provide documentation, which may be maintained in electronic form, to the other Party of the same that is sufficient to specifically identify the Services and adequately support the Service Charges. Once the Parties have received documentation of the Service Charges owed, the Parties shall work together in good faith to aggregate both Party's Service Charges ("**Net Service Charge**"). If the Parties are unable to agree on the Net Service Charge, the procedures set forth in Section 5.3 shall apply.

3.4.2 **Payment.** On or prior to June 30th of each year, the Foundation shall make a single cash payment to the University that is in an amount equal to the Net Service Charge if the Net Service Charge is an amount owed by the Foundation to the University.

3.5 **Meetings and Reports.**

3.5.1 **Reports.** The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. The Foundation leadership, including the Foundation CEO and the Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any), as approved by the Foundation Board. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information (as defined in the Operating Agreement), which is owned, controlled and possessed by the Foundation.

3.5.2 **Forecasting Service Charges for Foundation's Annual Budget.** Beginning on April 1 of each year, Foundation leadership and University leadership will review the quarterly reports to forecast the Service Charges for the next fiscal year. The Parties shall mutually agree on the estimated Service Charges for the next fiscal year by no later than the regularly scheduled spring/summer meeting of the Foundation Board.

3.5.3 **Historical Data.** In the last year of the Initial Term and each Renewal Term (as each term is defined in Section 5.1), the Foundation CEO and the University President shall meet to discuss the components of the formulas set forth in Sections 3.1 and 3.2 to determine if such components should be updated based on historical data, such as a rolling average of the data used in a particular component over at least the prior three years, to more accurately calculate the Service Charges. If the Parties determine such components should be updated based on the historical data, the Parties will modify that certain Operating Agreement, dated effective July 1, 2024, by and between the Parties ("**Operating Agreement**") to reflect the agreed-upon changes along with any related updates to the description of the scope of the Services provided by each Party to the other Party and present the modified Operating Agreement to the State Board and the Foundation Board for approval.

ARTICLE IV

RECORDS; PROTECTION OF CONFIDENTIAL INFORMATION

4.1 **Retention and Access.** Each Party shall maintain accurate and complete records with respect to Services performed and Service Charges owed. Such records shall be kept at each respective Party's principal place of business, may be maintained in electronic form and shall be available for inspection and use by the other Party or its representatives during normal business

hours. In addition, upon written request of either Party, the other Party shall execute a proprietary and confidentiality agreement.

4.2 **Definition. “Confidential Information”** means (a) any information disclosed by one Party to the other Party, either directly or indirectly, in writing, orally, electronically, digitally, via the internet or in any other form or manner or acquired by inspection, observation or otherwise, that is not generally known outside of the disclosing Party unless as a result of a breach of any of the receiving Party’s obligations imposed by this Agreement, that the disclosing Party marks or identifies as confidential or with a similar legend, or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential, including Confidential Donor Information, and (b) any information otherwise obtained, directly or indirectly, by the receiving Party through inspection, observation, review or analysis of information described in clause (a) of this Section 4.2.

4.3 **Exclusions.** Notwithstanding Section 4.2, Confidential Information does not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party to the receiving Party; (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no breach of any confidentiality obligations of any Party or a third party; (c) is in the possession of the receiving Party without an obligation of confidentiality at the time of disclosure by the disclosing Party as shown by the receiving Party’s files and records immediately prior to the time of disclosure; (d) is obtained by the receiving Party from a third party lawfully in possession of such information and without a breach of such third party’s obligations of confidentiality; or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the receiving Party’s possession.

4.4 **Restrictions on Disclosure and Use.** The receiving Party shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. The receiving Party shall use the same care and discretion to avoid disclosure of the disclosing Party’s Confidential Information as it uses with its own similar confidential information, and in no event with less than reasonable care. Without limiting the foregoing, the receiving Party shall: (a) limit access to any Confidential Information to receiving Party’s affiliates and the employees, contractors, agents and other representatives of the receiving Party and its affiliates (collectively, “**Representatives**”) who have a need to know in connection with the performance of the obligations under Parties’ Agreements (as defined in Section 6.11); and (b) require all Representatives having access to Confidential Information (excluding Representatives who are bound by duties of confidentiality with respect to the Confidential Information under applicable rules of professional conduct) to enter into a written agreement with the receiving Party containing restrictions with respect to the Confidential Information at least as restrictive as the restrictions set forth in this Agreement. The receiving Party shall, and shall cause its Representatives to, not use the Confidential Information of the disclosing Party except and solely in connection with the performance of the receiving Party’s obligations under the Parties’ Agreements. The receiving Party shall be liable to the disclosing Party for any act or omission by any of its Representatives that would constitute a breach of this Agreement by the receiving Party if the receiving Party engaged in such act or omission. The receiving Party shall

immediately notify the disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

4.5 **Confidential Donor Information.** Section 3.5.1 of this Agreement and the Operating Agreement set forth additional restrictions on disclosure and use of the Confidential Donor Information, and such restrictions shall be strictly complied with by the University and its Representatives.

4.6 **Legally Compelled Disclosure.** If the receiving Party or any of its Representatives becomes legally compelled (or requested by a regulatory body) to disclose any Confidential Information, the receiving Party will provide the disclosing Party with prompt written notice prior to disclosure, unless providing such notice would violate applicable law or regulation, so that the disclosing Party may seek a protective order or other appropriate remedy (and if the disclosing Party seeks such an order, the receiving Party will, and will cause its Representatives to, provide such cooperation as the disclosing Party reasonably requests, at the expense of the disclosing Party) or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained or if the receiving Party's compliance with the provisions of this Agreement is waived by the disclosing Party, the receiving Party will furnish, and shall allow any Representative to furnish, only that portion of the Confidential Information that is legally required (in the opinion of its legal counsel).

4.7 **Return or Destruction.** All documents and other tangible objects containing or representing Confidential Information of the disclosing Party shall remain the property of the disclosing Party. Promptly upon the disclosing Party's request or termination of this Agreement, the receiving Party shall, and shall cause its Representatives to, either return or destroy and certify to the destruction of (at the disclosing Party's election) all documents, including electronic copies, and other tangible objects containing or representing the disclosing Party's Confidential Information; provided, however, Confidential Information of the disclosing Party that is retained in compliance with the Party's document retention policies or contained in an archived computer system backup in accordance with applicable security or disaster recovery procedures is not required to be erased provided that (a) access to such copies shall be limited to personnel who need access in compliance with applicable record retention policies or security or disaster recovery procedures and (b) such copies shall continue to be subject to the confidentiality and nonuse obligations in this Article IV.

4.8 **Survival.** The obligations of this Article IV shall survive the termination of this Agreement for a period of five years, except with respect to any trade secrets of either Party, in which case the obligations of this Article IV shall survive as long as such Confidential Information remains a trade secret of the disclosing Party as provided by applicable law.

ARTICLE V

TERM, TERMINATION AND DISPUTE RESOLUTION

5.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and end on June 30, 2027 ("**Initial Term**"), and thereafter, this Agreement shall automatically renew for successive three-year terms (each a "**Renewal Term**" and, together with the Initial Term,

“**Term**”), unless and until terminated in accordance with the terms and conditions contained in this Agreement.

5.2 Terminate. This Agreement shall terminate upon the earlier of: (a) mutual written agreement of the Parties; (b) one year prior written notice by either Party to the other Party to terminate this Agreement for any reason or no reason; (c) a breach by a Party of any material provision of this Agreement and such breach is not cured within 30 days after notice from the non-breaching Party specifying the nature of the default (or if the breach is of a nature that it cannot be completely cured within the 30-day period, if the non-breaching Party does not commence such curing within such 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach); or (d) termination of the Operating Agreement. The Parties agree that in the event this Agreement terminates under this Section 5.2, they shall cooperate with one another in good faith to negotiate a new agreement within six months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described in Section 5.3 to further attempt to negotiate a new agreement.

5.3 Dispute Resolution. The Parties agree that in the event of any dispute arising from the Parties’ Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Foundation CEO and the University President have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Executive Chair of the Foundation Board and the State Board have 30 days to resolve the dispute. If the dispute is not resolved by the Executive Chair of the Foundation Board and State Board within 30 days, 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 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, if awarded by a court of competent jurisdiction.

5.4 Effect of Termination. Upon termination of this Agreement, each Party shall cooperate in order to effect an orderly transition of the applicable Services to the other Party, and all Service Charges shall be prorated to the extent appropriate based on the date of termination.

ARTICLE VI

GENERAL TERMS

6.1 Articles, Sections, Subsections and Subparagraphs. This Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2 and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is

hierarchical, meaning that a reference to a division of this Agreement includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

6.2 **Interpretation.** In this Agreement: (a) the words “including”, “include” and similar words are to be construed as being followed by the phrase “without limitation”; (b) the word “may” is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

6.3 **Notices.** Any notices required under this Agreement must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

Boise State University
Office of the President
1910 University Dr.
Boise, Idaho 83706

cc: counsel@uidaho.edu

To the Foundation:

Boise State University Foundation, Inc.
Chief Executive Officer
1173 University Dr.
Boise, Idaho 83706

6.4 **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. At all times and for all purposes of this Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party. As independent entities, the University and the Foundation shall not be liable for any of the other Party’s contracts, torts or other acts or omissions, or those of the other Party’s trustees, directors, officers, employees or agents.

6.5 **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.* .

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

6.7 **Modification.** Any modification to this Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 3.1.2 and 3.2.2.

6.8 **Governing Law; Required Certification.** This Agreement shall be governed by the laws of the State of Idaho.

University is prohibited by state law from entering into certain contractual agreements. Foundation hereby certifies that: (i) pursuant to Idaho Code Section 67-2346, if it is a company, the total value of the contractual agreement exceeds one hundred thousand dollars(\$100,000), and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; (ii) pursuant to Idaho Code Section 67-2359, if it is a company, it is not currently owned or operated by the People's Republic of China led by the Chinese communist party and will not for the duration of the Agreement be owned or operated by the People's Republic of China; and (iii) except to the extent this Agreement is a contract or commercial transaction that is subject to a federal law related to Medicaid or a contract with a hospital as defined in Idaho Code, Section 39-1301, it is not an abortion provider or an affiliate of an abortion provider under the No Public Funds for Abortion Act. The terms in this paragraph defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. This certification is made solely to comply with the Idaho statutes referenced herein and to the extent such section does not contravene applicable State or federal law.

6.9 **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

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

6.11 **Entire Agreement.** This Agreement, the Operating Agreement and the agreements contemplated to be entered into by the Parties under the Operating Agreement, which are (a) the AFC Lease Agreement by and between the Foundation and the University ("AFC Lease Agreement") and (b) the Loaned Employee Agreements (collectively with this Agreement and the Operating Agreement, "**Parties' Agreements**"), constitute the entire agreement among the

Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements and the provisions of the Operating Agreement, the provisions of the Operating Agreement shall control. If the Operating Agreement is amended at any time during the Initial Term or a Renewal Term, to the extent such amendments cause inconsistencies between this Agreement and the Operating Agreement, this Agreement shall be amended to cure such inconsistencies. This Agreement supersedes any prior written or oral statements related to the terms of this Agreement.

6.12 **Execution.** This Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the University and the Foundation have executed this Agreement on the date set forth below the Party's signature to be effective on the Effective Date.

BOISE STATE UNIVERSITY

By: _____

Name: Marlene Tromp

Its: President

Date: _____

**BOISE STATE UNIVERSITY FOUNDATION,
INC.**

By: _____

Name: Jim Martin

Its: Executive Chair

Date: _____

EXHIBIT A**COMPONENTS OF SERVICE CHARGES**

“Accounts Payable Amount” means \$7.00.

“Accounts Payable Costs” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by the Accounts Payable Amount and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

“Cost to Raise a Dollar” means the cost associated with the Foundation’s fundraising efforts to raise one dollar, which shall initially be the CRD Amount.

“CRD Amount” means \$0.20, which is based on current industry standards.

“

“Fundraising Goal” means a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year.

“HR Costs” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

“Loaned Employees” means all positions for which the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to Foundation by University for the entire 12 months of the fiscal year, and Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year.

“Loaned Employee Payments” means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

“OIT” means the University’s Office of Information Technology.

“OIT Costs” means the OIT budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

“Operations Support Costs” means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs.

“Payroll Support Amount” means \$2.25.

“Payroll Support Costs” means the product of (a) the Payroll Support Amount, (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

“Rent” means the square feet of the premises leased by the University to the Foundation pursuant to the terms of that Lease Agreement multiplied by \$22.50 (**“Rental Rate”**) for the fiscal year.

“Vital Goals” means the list of vital goals collaboratively developed by the Foundation CEO and the University President prior to the beginning of each fiscal year that shall include the Fundraising Goal.

Effective Date of this Exhibit A: _____

UNIVERSITY PRESIDENT

By: _____

Name: _____

Date: _____

FOUNDATION CEO

By: _____

Name: _____

Date: _____

BOISE STATE FOUNDATION - BOARD EFFECTIVENESS SURVEY

Participant Instructions:

The Board Effectiveness & Priorities Survey provides an opportunity for the Board to look at itself and ask “How are we doing as a Board?” The purpose of the survey is to self-assess the Board’s effectiveness, identify areas of strength and opportunity, and align strategic and funding priorities. The Board will utilize survey results to define how the Board can build a stronger Board and governance model.

Please answer each question with the following:

Strongly Agree -- Agree -- Neutral -- Disagree -- Strongly Disagree

In addition, please include comments where additional detail would be beneficial.

SECTION 1: BOARD STRUCTURE & EXPECTATIONS

1. The structural pattern of the Board is clear (i.e., Board, officers, committees) and is evaluated regularly for effectiveness.
2. The Board has clear expectations of Board service and board member responsibilities.
3. Board members’ areas of expertise are effectively utilized to the benefit of the Foundation’s mission and strategies.
4. Board members are sufficiently engaged and effectively involved in the work of the Board and committee(s).

SECTION 2: BOARD EFFECTIVENESS

5. The Board follows appropriate parameters in order to handle governance and policy issues while enabling the Executive Director to manage operations.
6. As a Board member, I have the opportunity to be actively involved in shaping the purpose and strategic goals of the Board.
7. The Board provides adequate financial oversight and ensures proper financial controls are in place.
8. The Board facilitates a constructive relationship with the Executive Director characterized by mutual respect and open, two-way communication.
9. The Board facilitates a constructive relationship with University Advancement’s leadership characterized by mutual respect and open, two-way communication.
10. The Board facilitates a constructive relationship with the University leadership (President’s office, Deans, etc.) characterized by mutual respect and open, two-way communication.
11. Advancement and University staff are accessible and engaging with Board members in a way that benefits and positively contributes to the board experience.
12. Foundation Board Google Site is an effective and necessary resource.

SECTION 3: BOARD MEETINGS / NEW STRUCTURE

13. Board meetings occur at an appropriate cadence and are conducted effectively and with an appropriate allocation of time and resources to keep board members informed and able to address significant decisions.
14. Board meeting materials are provided to board members with adequate time to review in advance of meetings.
15. Board topics are relevant, interesting, and informative.
16. The new structure (hybrid meetings, social events, committee meetings, presentations from the Deans, etc.) has provided more opportunities for learning and engagement.

17. Please provide suggestions to improve Board meetings and the Board member experience.

SECTION 4: FUNDRAISING

- 18. The Board plays a significant role in fundraising on behalf of the Foundation and University.
- 19. I have a clear understanding of fundraising priorities, development activities, and strategic plans for the comprehensive campaign.
- 20. I am comfortable being an advocate for the University and contributing to fundraising efforts by encouraging donations from colleagues, family, friends, and the community.

SECTION 5: GENERAL FEEDBACK

- 21. What are the one or two most effective aspects of the Foundation's Board?
- 22. What are the one or two least effective aspects of the Foundation's Board?
- 23. How has the new structure (hybrid option, social events, etc.) changed your participation?
- 24. What other topics or guest presenters would you like to hear from at a Board meeting?
- 25. Other comments or suggestions?

THANK YOU for your feedback!