

MASTER SERVICES AGREEMENT

BETWEEN BOISE CITY AND BOISE STATE UNIVERSITY

This Master Services Agreement (hereinafter, the “Agreement”) is entered into on this _____ day of October, 2021, between the city of Boise City, an Idaho municipal corporation, by and through the Boise Police Department (“Boise City” or “BPD”), and Boise State University, a public institution of higher education, organized and existing under the Constitutional authority of the State Board of Education, acting as the Board of Trustees for Boise State University, and the laws of the State of Idaho, by and through the Department of Public Safety (“University”), (collectively, the “Parties”).

RECITALS

WHEREAS, University desires to contract with Boise City for the performance of law enforcement functions and police services by BPD, as described herein; and

WHEREAS, Boise City is agreeable to rendering such services on the terms and conditions set forth herein, and agrees to provide law enforcement services at and for the benefit of the University, its students, faculty and staff, and those in the campus community; and

WHEREAS, the parties wish to state more fully their rights and responsibilities regarding such functions and services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Scope of Services.** Boise City will provide and perform such services described herein, with the standard of care and skill customarily provided in the performance of such services, upon the Main Campus of Boise State University and those University properties within the Area of Service defined below.
 - a. Boise City agrees to employ, furnish, and supply all necessary personnel, together with their equipment, supplies and supervision, records and record-keeping, vehicles, communication equipment, along with maintenance, and such other items as are reasonable, customary and necessary.

- b. Services will include, but not be limited to: the investigation and enforcement of state criminal and traffic laws, coordination of investigations and responses related to sexual assaults or other gender-based violence in a manner consistent with the law and this Agreement, filing investigative and other required reports or documents, patrolling and maintaining building security, traffic control and enforcement (but not parking control), accident investigation and assistance to other law enforcement agencies as appropriate, and the preservation of peace upon campus properties and within its buildings as set forth herein. Boise City will also provide certain non-law enforcement services, but directly related to the safety and security of the campus community, including but not limited to participation in University's Campus Assessment, Resource and Education ("CARE") Team related to threat assessments and behavioral intervention; participation in the University's Campus Safety Advisory Committee ("CSAC"), related to campus public safety issues generally, including but not limited to identifying training initiatives for campus security officers and/or BPD officers to bolster campus engagement, collaboration, transparency, and communication.
2. Area of Service. Boise City will provide the services upon the Boise State University Main Campus and within buildings at the Main Campus, shown by Exhibit A, along with University-owned, controlled or maintained buildings and properties which lie within the BPD jurisdiction areas, which properties will be updated from time to time and provided to the assigned Lieutenant. Calls for service that are for University properties not located on the Main Campus may be answered by the Patrol Division assigned to the area the properties are located in.
3. Law Enforcement Unit. The parties agree and intend to establish Boise Police Department (BPD) as a campus law enforcement unit in accordance with the definition of a law enforcement unit contained in 34 CFR § 99.8(a)(1)(i)-(ii). As such, BPD is a law enforcement unit made up of officers or officials authorized or designated by University to:
 - a. enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; and

- b. maintain the physical security and safety of the University, and its patrons, students, and employees.
- 4. Term. Unless sooner terminated as provided for herein, this Agreement shall be effective for a term of five (5) years and two (2) months starting on November 1, 2021 and expiring on December 31, 2026. Each new year for the purposes of this Agreement will begin on November 1, with Year 5 consisting of one (1) year and two (2) months.
- 5. Cancellation. Either party may cancel this Agreement for nonperformance, or inadequate or poor performance with ninety (90) days written notice. Any cancellation of this Agreement based upon inadequate or poor performance or service expectations not being met must be in good faith and any amounts due under this Agreement shall be calculated through the actual date of termination of this Agreement rather than the date of notice of termination.
- 6. Consideration. University, in consideration of the functions and police services provided under the terms of this Agreement, will pay (in monthly installments) to the City the total annual sum set forth below. The first column represents Personnel Costs reimbursement to the City (with a 4% escalator annually). The second column represents reimbursement of Indirect Cost reimbursements to the City (with a 3% escalator annually) associated with the Boise Police unit assigned to Boise State University.

<u>Year #</u>	<u>Personnel</u>	<u>+</u>	<u>Indirects</u>	<u>=</u>	<u>Total Annual Payment</u>
Year One:	1,625,243	+	323,353	=	1,948,596
Year Two:	1,690,252	+	333,053	=	2,023,305
Year Three:	1,757,862	+	343,053	=	2,100,906
Year Four:	1,828,176	+	353,344	=	2,181,520
Year Five:	1,901,303	+	363,944	=	2,265,247

- 7. Additional Consideration.
 - a. From time to time, University requires additional law enforcement presence at University or non-University events (those events held by outside individuals, corporations or agencies at which the outside entity or person requests additional BPD officer staffing or involvement) taking place at Main Campus venues or on other properties owned, managed or controlled by Boise State.

- b. University events are defined as those events held or sponsored by University officials, departments, or organizations, including student organizations, or those events for which the Department of Public Safety requests additional BPD staffing or involvement. Non-University events are defined as those events held by outside individuals, corporations or agencies at which the outside entity or person requests additional BPD officer staffing or involvement.
- c. For these events, Boise City will assign additional officers in uniform at a rate as follows:

YEAR	UNIVERSITY EVENT	NON-UNIVERSITY EVENT
Year One	\$64 per hour	\$72 per hour
Year Two	\$66 per hour	\$74 per hour
Year Three	\$68 per hour	\$76 per hour
Year Four	\$70 per hour	\$78 per hour
Year Five	\$72 per hour	\$80 per hour

8. Regulated Environment. Boise City is aware of University’s reporting, investigation, record-keeping and compliance obligations and the measures undertaken pursuant to *Family Educational Rights and Privacy Act* (“FERPA”) (20 U.S.C. § 1232g), the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* and its amendments within the *Higher Education Opportunity Act* (the “Clery Act”), *Title IX of the Education Amendments of 1972* (34 CFR Part 106) (“Title IX”) and Section 304 of the *Violence Against Women Reauthorization Act of 2013* (“VAWA”), and as such, will aid and support University in meeting its obligations under these laws, as the same may be amended from time to time, including but not limited to providing access to or copies of LE Records necessary to meet its obligations.

9. Types of Records.

- a. Law Enforcement Records (LE Records) are:
 - i. created by Boise City;
 - ii. created for a law enforcement purpose; and
 - iii. maintained by Boise City. See 34 CFR § 99.8(b)(1) LE Records.

- b. LE Records do not include records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the Human Resources department or Dean of Students at University. See 34 CFR § 99.8(b)(2).
 - c. Education Records:
 - i. Are directly related to a student; and
 - ii. Are maintained by the University;
 - iii. Include but are not limited to grades, transcripts, class lists, student course schedules, student financial information, and student discipline files.
 - iv. May be held and maintained by the University in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. See 34 CFR § 99.2.
10. Access to LE Records by University and Information Sharing.
- a. Recognizing the University responsibility to respond promptly and effectively to protect the campus community from and investigate hate crimes, violent crimes, or crimes of gender based or sexual violence, and the University's urgent need to receive information that affects the campus students, faculty, and staff safety, Boise City will disclose LE Records, information and investigatory records to University officials as soon as practicable and under confidential stamp. In instances where immediate sharing of records is not possible, Boise City will actively and promptly communicate with University Public Safety or Title IX officials to ensure the safety of the campus community, including, if known, the name and description of the victim and perpetrator, a description of the incident, including location and date and time, and any DR or other report number assigned to the police incident report documenting the investigation being conducted. Pending the release of records, the Lieutenant or his/her designee assigned to the University will verbally communicate with the Associate Vice President of the Department of Public Safety (or his/her designee) or the University Title IX Representative with as much information as is possible to aid and support the University in its investigation.
 - b. Routing for Screening Decisions. LE Records, DRs, or other reports that contain evidence meeting the elements of hate crimes, violent crimes, and crimes of gender based or sexual violence alleged to have occurred on the Main Campus or

University-owned, controlled or maintained buildings and properties within the Boise Police jurisdiction areas will be routed to the Ada County Prosecuting Attorney's Office, Boise City Attorney's Office, or other special prosecutor as assigned, for a charging or "screening" decision unless the relevant prosecuting agency has been consulted and has indicated otherwise.

- c. LE Records. LE Records related to University business, regardless of format, will be freely shared with the University and may be utilized for any lawful purpose, including but not limited to Title IX, Clery Act, Student Conduct, or Human Resource disciplinary proceedings, but will not be released by the University to any outside party, nor will LE Records created and maintained by Boise City be held by the University as a record of the University. LE Records are not records belonging to the University and must be requested by the public through the Boise Police Department. Boise City is the custodian of LE Records produced by City personnel and any persons requesting LE Records will be referred to City to submit a public record request.
11. Access to Education Records by BPD and Information Sharing.
- a. BPD officers and staff assigned to University:
 - i. perform an essential institutional service and function for which the University would otherwise use employees;
 - ii. are designated as "school officials;"
 - iii. possess a "legitimate educational interest" in student educational records. See 34 CFR § 99.31(a)(1)(i)(B); and
 - iv. may view or have access to student education records in order to perform their professional duties, subject to certain limitations.
 - v. Limitations.
 - 1. FERPA still applies to the student education records and information from those records. BPD officers and employees, with whom Education Records and information from Education Records are shared, are employees are subject to:
 - a. FERPA's redisclosure requirements in 34 CFR § 99.33(a);
 - b. FERPA's consent requirements in 34 CFR § 99.31;

- c. Are under the direct control of the University with respect to the use and maintenance of the Education Records; and
 - d. Meeting the criteria established by the University's annual notification of FERPA rights, as required by 34 CFR § 99.7 in order to maintain designation as school officials with a legitimate educational interest.
 - 2. BPD officers participating in the CARE Team functions may only use Personally Identifiable Information (PII) from Education Records to conduct threat assessments. For the sake of clarity and the avoidance of doubt, a BPD officer serving on the CARE Team may not share any PII with BPD from a student's education records to which he or she was privy to as a member of the CARE Team.
 - 3. A BPD officer may disclose PII from a student's education records, on behalf of the University, to appropriate officials where a CARE Team determination finds that a health or safety emergency exists. See §§ 99.31(a)(10) and 99.36.
 - vi. By allowing BPD officers, as school officials, to have appropriate access to a student's Education Records, BPD and University can work cooperatively to detect warning signs and determine whether a particular student poses a risk or a threat to him/herself and/or the campus community. To allow this communication to occur, both BPD and University must comply with the confidentiality requirements of FERPA for education records as set forth above.
- 12. Independence and Performance of Duties. BPD personnel are employees of Boise City, and are not the employees of University. Nothing in this Agreement shall be deemed or construed to: (i) create a partnership, joint venture, or employer-employee relationship between University and Boise City personnel; or (ii) constitute or authorize BPD or Boise City employees, officers, or agents acting as University employees, officers or agents. Boise City is retained by the University only for the purposes and to the extent set forth in this Agreement, and Boise City's relationship to the University shall during the term of this Agreement be that of an independent contractor. Boise City employees shall not be considered as having an employee status or as being entitled to

- participate in any plan, arrangements, or distributions by the University pertaining to or in connection with any qualified pension plan or providing any other health or welfare plan with similar benefits for regular employees. Boise City shall be responsible for the payment of any taxes due, if any, on any monies received from University. Except as provided below and herein, Boise City reserves the right to determine the deployment and dispatch method(s) for officers performing duties under this Agreement in the direction of, and carrying out of their work, and the manner in which the services described in this Agreement shall be provided.
- a. The parties agree that deployment of services will be accomplished by foot, bicycle, and/or vehicle patrols.
 - b. Required Staffing Levels will be determined by the parties and will be set forth in a Standard Operating Procedure.
 - c. Dispatch personnel employed by Boise City will provide support services in parallel fashion to Public Safety officials and BPD alike.
13. Controlling Procedures. The procedures of Boise City personnel will be governed by the Boise Police Policy Manual (“Manual”) except as specifically set forth in this Agreement. Where University procedure directly conflicts with the procedures set forth in the Manual, the provisions of the Manual shall prevail. The Associate Vice President for Public Safety (or his/her designee) will be consulted regarding Boise Police Standard Operating Procedures (SOPs) that mutually affect BPD and University or Public Safety officers and officials.
14. Open Dialogue. Boise City will maintain an open dialogue with University and exchange information regarding scheduling needs, public safety concerns, and matters of mutual interest; provided however, that no special relationship or duty is created or contemplated herein. In emergency situations or when there is an ongoing threat to the campus community or a member of the campus community, the Associate Vice President for Public Safety (or his/her designee) and the assigned Lieutenant or his/her designee will ensure information sharing occurs as quickly and as often as the situation will allow for, given the constraints that may exist.
15. Clery Act Requirements. Pursuant to the Clery Act, each Boise City officer is considered a “Campus Security Authority,” meaning each has a responsibility for campus security and has a duty to follow Clery Act requirements, including but not

- limited to: maintaining the daily log, providing appropriate information for timely warnings or emergency notifications, completing the appropriate Clery Act paperwork when crimes are reported to them, and completing Clery Act training provided by the University. BPD is the primary law enforcement agency to which University would refer crimes to be investigated and reported. As such, Boise City will be required to provide annual Clery Act statistics for the Annual Security Report. Boise City will have the primary responsibility to ensure the accuracy of the crime log, as well as ensuring it is available in accordance with this Agreement and Clery Act requirements. Clery Act training and education for officers specially assigned to the University or who may be deployed to the University for replacement or backfill will be determined by the University Clery Compliance Officer, in consultation with the assigned Lieutenant.
16. Title IX Requirements. Boise City will ensure that officers who are regularly assigned to work on the Main Campus or within the Area of Service, as well as personnel who may be assigned to provide support, including replacement or backfill for University-assigned officers, are aware of their responsibilities under Title IX of the Education Amendments of 1972 and Section 304 of the Violence Against Women Reauthorization Act of 2013 and ensure compliance under these federal acts. Boise City personnel assigned to the University will complete an annual Title IX training module provided by the University.
 17. Peace Officer Standards and Training and Personnel. Boise City will utilize P.O.S.T.-certified officers in meeting its obligations under this Agreement. Six (6) officers will be assigned to the University in addition to one (1) Lieutenant and four and two-tenths (4.2) Police Admin Specialists. Boise City agrees to consult with the University in the scheduling of personnel. Appropriate University Public Safety officials will be consulted in the selection process of any BPD officer or dispatcher being considered for a new assignment to the University. Boise City retains its discretion to make officer assignments to University; provided, however, that BPD agrees to consult with the Associate Vice President for Public Safety (or his/her designee) in the selection and placement of BPD officers on assignment to the University.
 18. Backfill and Replacement. BPD reserves the right to assign officers from different units to the University campus. However, BPD may give preferred assignment for extra

- shifts to regularly assigned University officers to ensure consistency of the operational philosophy of BPD and University. All non-University officers with a temporary work assignment at University will be required to complete training related to University BPD Unit operating procedures.
19. Assigned BPD Lieutenant. Taking into consideration the operational needs of BPD, the Lieutenant assigned to the University Unit will be considered for a rotational position every four years. Absent budgetary constraints, a newly assigned Lieutenant will be trained and transitioned into the University assignment by the departing Lieutenant for a period no less than four weeks. The Lieutenant assigned to manage the University Unit will participate as a member of University's:
- a. Campus Assessment, Resource and Education ("CARE") Team. As a member of the CARE Team, and within Boise City budgetary constraints, the Lieutenant will maintain an ATAP membership and will attend appropriate training sessions and conferences to maintain a competency in the best practices for the threat assessment.
 - b. Campus Safety Advisory Committee ("CSAC"), a committee yet to be formed in order to:
 - i. bolster community engagement, collaboration, transparency and communication with the campus community representatives to be selected by the Office of the President, and
 - ii. heighten campus community awareness regarding the University's hybrid model of campus safety.
20. Contract Management and Administration; Problem Solving. BPD and Public Safety will each designate an employee to be its administrator of this Agreement for the purpose of coordinating the efforts of University employees and the employees of BPD.
- a. For the City and BPD, the administrator shall be the person serving in the Lieutenant position.
 - b. For the University, the administrator shall be the Associate Vice President for Public Safety (or his/her designee).
 - c. Each party agrees to provide its full cooperation and assistance to the other, so as to facilitate the performance of this Agreement. Matters of dispute shall be resolved through good faith negotiations within the Chain of Command, and whenever

possible, in a face-to-face meeting or series of meetings. Where those persons cannot resolve a disputed matter to their mutual satisfaction, they will be joined in the resolution process by their immediate superiors, the COD Captain for Boise City, and the Vice President of University Affairs for the University. Where the matter remains in dispute, and without a satisfactory resolution, the parties may, if both parties are in agreement that mediation is necessary, seek to mediate the dispute through a shared cost mediation process.

21. Key Personnel. Key Personnel consists of the Lieutenant position and the Police Admin Specialist(s). Boise City shall not substitute Key Personnel to the performance of this Agreement without consultation with the Associate Vice President for Public Safety (or his/her designee), which consultation shall require the express consent of the University, which may be withheld in its reasonable discretion.
22. BPD Officers Assigned to Boise State. Boise City and the University will consult with each other to ensure that the BPD officers who are regularly assigned to the University are well-suited to the assignments. In reaching toward that important goal, the Associate Vice President for Public Safety (or his/her designee) shall be a required participant in the selection process for BPD officers to be assigned to the University, including participation in BPD officer selection boards.
23. Assignments or Substitutions. Boise City shall not assign or substitute any BPD personnel involved in the performance of this Agreement without consulting the Associate Vice President for Public Safety. BPD will prioritize the preferences of the University in personnel assignments; however, personnel assignments for BPD officers who are not Key Personnel remain in the sole discretion of BPD.
 - i. Boise City personnel positions at Boise State may not languish unfilled. Unless otherwise agreed to by the parties, any anticipated or unanticipated absence of more than 30 days shall require the unfilled personnel position(s) to be replaced with a candidate chosen in consultation with the University who has received training necessary to serve in the University law enforcement position. In the event that a position must be filled for public safety needs but the officer has not received that necessary training, the training will be scheduled at the earliest possible opportunity.

24. Training. In addition to University-specific training (e.g. Clery Act, Title IX), the University may provide or recommend supplemental training for personnel assigned to provide services on the Main Campus or within the Area of Service. Any supplemental training must be approved by the assigned Lieutenant, in consultation with BPD's Training, Education, and Development Division (TEDD), to ensure that it does not conflict with BPD's standardized officer training program.
25. Service Hours. Boise City will provide the services, staffing and operation as specified herein on a twenty-four (24) hour-a-day, seven (7) day-a-week basis.
26. Police Admin Specialist Hours and Training. Boise City will provide Police Admin Specialist personnel at the Campus Substation as specified herein on a twenty-four (24) hour-a-day, seven (7) day-a-week basis.
 - a. Individual shift scheduling of Police Admin Specialists shall be at the discretion of Boise City; provided, however, that the Campus Substation office hours of staffing and operation shall be on a twenty-four (24) hour-a-day, seven (7) day-a-week basis.
 - b. Training for Police Admin Specialists will be determined by the assigned Lieutenant, in consultation with the Associate Vice President for Public Safety (or his/her designee). The Associate Vice President for Public Safety (or his/her designee) will assign a liaison to the assigned Lieutenant and Police Admin Specialists to ensure the needs of the University are met.
27. University Policies. The University may from time to time adopt policies governing the conduct of students and other persons present on the Main Campus or upon University properties in the Area of Service. To the extent that violation of University policies also constitutes a violation of applicable law, including a breach of the peace, or a threat to public health or safety, Boise City will take the appropriate law enforcement actions as Boise City determines in its sole discretion to be proper under the circumstances. To the extent that violation of those policies does not constitute a violation of applicable law, Boise City is not required to take any law enforcement action and may leave the enforcement of policies to the University.
28. Vehicles, Equipment, Facilities. All vehicles, equipment, and facilities are and shall be owned and maintained by the purchasing party.

- a. Vehicles. City, at its sole cost and expense, shall provide, maintain and repair appropriate vehicles as may be reasonably required to perform any of the duties assigned hereunder. Boise City agrees at a minimum to provide:
 - i. two (2) suitable patrol vehicles equipped with appropriate law enforcement equipment, such as lights, sirens, approved weapons and radio; and
 - ii. one (1) unmarked patrol vehicle, as well as any law enforcement equipment approved to be carried by the officers.
- b. Equipment.
 - i. City. Boise City shall, at its sole cost and expense, provide to its officers all equipment required or necessary to perform their duties, including uniforms, badges and other accoutrements, weapons, manuals, report forms, and such other equipment and materials as Boise City routinely issues to its police officers and upon the terms in the Collective Labor Agreement. All equipment provided by the Boise City (or provided by the police officers at their expense) shall remain the property of the City (or the police officer, as the case may be). Additionally, as part of the Agreement price, Boise City agrees to provide computers and printer equipment for BPD as part of its law enforcement and campus policing purposes.
 - ii. University. University shall, at its sole cost and expense, provide such other specialized equipment as it shall require for police officers assigned to University, if any. Such University-supplied equipment shall remain the property of University, to be returned at the conclusion of the assignment. Any such specialized equipment will be identified and inventoried as such, with the City signing acknowledgment of receipt of such equipment and returning the same as soon as the equipment is no longer needed by Boise City. Any equipment belonging to University may only be used in connection with the service provided herein and may not be removed from the Main Campus of the University without the authorization of the Associate Vice President for Public Safety (or his/her designee), unless necessary to assist a Boise City officer or Public Safety officer in providing emergency response and assistance. Cost of repairs related to abusive

damage to University-provided equipment, caused by the City, will be the responsibility of the City.

c. Facilities.

- i. University. University hereby grants to City a revocable license to occupy and utilize certain office space (“Non-leased Space”) upon the Main Campus of University or at other locations on University property in order to perform the Police Services. The Non-Leased Space shall be rent free but occupancy shall be pursuant to and conditioned upon the terms and conditions set forth in Exhibit B (attached hereto and incorporated herein). Additionally, City shall enter into a lease for any facility utilized by the City for purposes outside of the Police Services provided hereunder.
- ii. University shall provide office space, furniture, and equipment, including but not limited to: telephones, computers/monitors/printers for the BPD dispatch center, and a radio communication system deemed sufficient by BPD for the purposes of this Agreement.
- iii. University will provide four (4) reserved parking stalls for BPD vehicles and substation employees. Curb parking for marked police vehicles will be located in front of the substation. Properly identified police vehicles may park anywhere on campus within legal zones and restrictions. Additional parking for BPD personnel will be managed consistent with University Department of Public Safety policy and practice.
- iv. Boise City will pay University for parking and use of any private vehicles for officers or other employees, using parking rates and rules applicable to University employees.

29. Indemnification.

- a. To the extent permitted by Idaho law, City shall indemnify, defend, and hold harmless University, its officers, agents, and employees from any and all liability, loss, damage or claims, of any description, which results directly or indirectly from the negligent acts or omissions or other tortious conduct of City, its officers, agents or employees in performing the services and duties described in this Agreement except those which arise out of the negligent acts or omissions or other tortious conduct of University, its officers, agents, and employees. Such indemnification

and defense shall be limited to only those claims, and only to the extent that, City itself could be liable under state and federal statutes, regulations, common law, and other law. In no event will the indemnification provisions herein alter or waive the protections afforded and/or defenses that may be available to the City under the Idaho Tort Claims Act, including any defenses, burdens of proof, immunities, and limitations on damages to which City would be entitled if the claims were asserted against City.

- b. To the extent permitted by Idaho law, University shall defend, indemnify, and hold City, its officers, agents, and employees harmless from any and all liability, loss, damage or claims, of any description, which results directly or indirectly from the negligent acts or omissions or other tortious conduct of University, its officers, agents or employees in performing the duties described in this Agreement, except those which arise out of the negligent acts or omissions or other tortious conduct of City, its officers, agents, and employees. Such indemnification and defense shall be limited to only those claims, and only to the extent that, University itself could be liable under state and federal statutes, regulations, common law, and other law. In no event will the indemnification provisions herein alter or waive the protections afforded and/or defenses that may be available to the University under the Idaho Tort Claims Act, including any defenses, burdens of proof, immunities, and limitations on damages to which University would be entitled if the claims were asserted against University.
 - c. Nothing herein shall be deemed to constitute a waiver by City or University of any privilege, protection, or immunity otherwise afforded to it under the Idaho Constitution, or other applicable law. Nothing contained herein shall be deemed a waiver of University's sovereign immunity, which is hereby expressly retained.
30. Insurance. City will, at its sole cost and expense, procure and maintain throughout the term of this Agreement:
- a. Commercial general liability insurance with limits not less than \$500,000.00 as is required by the Idaho Tort Claims Act with combined property damage and bodily injury liability, including blanket contractual and personal injury liability;
 - b. Automobile liability, including property damage and bodily injury with combined limits of not less than \$500,000.00; and

- c. Worker's compensation insurance in amounts as required by statute, regardless of the number of employees, or lack thereof, to be engaged in the completion of this Agreement.
- 31. Use of Marks or Logos. Except as authorized by the Associate Vice President for Public Safety (or his/her designee), in consultation with the Office of Trademark and Licensing, BPD shall not, prior to, in the course of, or after performance under this Agreement, use University's name or marks, including but not limited to its logos, in any advertising, badging, promotional media or vehicle wraps. Likewise, unless University is authorized by the Chief of Police, it shall not use BPD's or the City's name, marks, or logos in any advertising, badging, promotional media or vehicle wraps.
- 32. Entire Agreement. This Agreement constitutes the entire Agreement of the parties, and shall supersede all prior agreements, oral or written, between the parties, on the subject matter. Any conflicts or inconsistencies shall be resolved through a meeting between the administrators for the parties.
- 33. Anti-Discrimination/Equal Employment Opportunity. Acceptance of this Agreement binds the City to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that 'No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.' In addition, 'No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance' (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. Sections 621, *et seq.*, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The City shall comply with pertinent amendments to such laws made

during the term of the Agreement and with all federal and state rules and regulations implementing such laws.

34. Default; Notice and Opportunity to Cure; Notice of Termination. Where performance has been deemed, in the sole discretion of either party to this agreement, to be substandard, or does not meet the service levels or expectations of either party, or Key Personnel or BPD officers do not meet the expectation of the University, then either party may choose to notify the other with reasonable specificity, of the deficiency, or the failure to meet expectations, or the Key Personnel issues requiring resolve. Upon receipt of the notice, the party shall be provided a thirty-day period of time to communicate with the other party to seek clarity and cure or adjust its performance or Key Personnel in accordance with expectations. If, at the conclusion of such thirty-day period, the notifying party is not satisfied with the other party's efforts to cure or adjust performance, then the notifying party shall issue a second notice, a notice of cancellation or termination, which shall be effective sixty (60) days following receipt of the notice of cancellation. Amounts due under this Agreement shall be calculated through the actual date of cancellation or termination of this Agreement on a *pro rata* basis rather than the date of notice.
35. Appropriation by Legislature Required. University is a government entity, and this Agreement shall in no way or manner be construed so as to bind or obligate it or the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. University reserves the right to terminate this Agreement in whole or in part if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for University to continue such payments, or if the Executive Branch mandates any cuts or hold backs in spending. All affected future rights and liabilities of the parties hereto shall thereupon cease thirty (30) calendar days after notice to BPD. Amounts due under this Agreement shall be calculated through the actual date of termination of this Agreement on a *pro rata* basis rather than the date of notice of termination.
36. Notice. Notices required or contemplated under this Agreement shall be in writing and mailed or hand-delivered to the respective parties at the following addresses, or such other addresses as the parties hereto may, by notice, designate in writing to each other.

BOISE STATE UNIVERSITY

Alicia Estey
VP of University Affairs
Boise State University
1910 University Drive
Boise, Idaho 83725
Phone: (208) 426-1417

BOISE POLICE DEPARTMENT

Chief Ryan Lee
Chief of Police
Boise City Police Department
333 N. Mark Stall Place
Boise, Idaho 83704
Phone: (208) 570-6000

37. No Waiver of Future Breach. The failure of a party hereto to insist upon strict performance or observation of this Agreement shall not be a waiver of any breach or of any terms or conditions of this Agreement by any other party.
38. Severability. In the event any provision or section of this Agreement conflicts with applicable law, or is otherwise held to be unenforceable, the remaining provisions shall nevertheless be enforceable and carried into effect.
39. Attorney Fees. In the event of any litigation arising under or as a result of this Agreement or arising from all of the acts to be performed hereunder or the alleged breach of this Agreement, the prevailing party shall recover its costs and reasonable attorney fees.
40. Governing Law. This Agreement shall be governed and interpreted pursuant to the laws of the State of Idaho.
41. Amendment. No amendment, alteration, or modification of this Agreement shall be effective unless made in writing and duly executed by the parties hereto.
42. Counterparts. The parties will execute five (5) counterparts of this Agreement and each such counterpart shall be deemed an “original” for all purposes.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

[SIGNATURE PAGE FOLLOWS]

FINAL

DATED this ____ day of October, 2021.

BOISE CITY

BOISE STATE UNIVERSITY

Ryan Lee
Chief of Police

Mark Heil
CFO & Vice Pres., Finance & Admin.

BOISE CITY MAYOR

ATTEST:

Lauren McLean

Boise City Clerk

FINAL

EXHIBIT A – Depiction of Main Campus

EXHIBIT B
TERMS AND CONDITIONS

Occupancy of any Non-Leased Space shall be subject to the following terms and conditions:

No expansion of the utilized space will be allowed without the express written consent of the University.

All Non-Leased Space shall be utilized only for the purposes described in the Agreement as of the date of this Agreement and for no other purposes without the express written consent of the University.

University reserves the right to relocate BPD to other suitable and comparable Main Campus space to the extent the Non-Leased Space is required for other educational or University operational purposes. Prior to initiating any relocation, the University will review functionality and any response time concerns with BPD.

BPD will keep and maintain the Non-Leased Space in a neat, clean and orderly condition.

City will not operate the Non-Leased Space in such a fashion as to incur extraordinary utility costs and will use best practice efforts to minimize lighting and HVAC utility costs.

BPD shall comply with all present and future laws and regulations relating to regulated materials, including hazardous materials and agrees to abide by the Environmental Regulations of the University. BPD shall not use or store Hazardous Materials upon or within the Non-Leased Space and shall not dispose of any Hazardous Materials upon surrounding lands or waters.

BPD shall not make any improvements or do any other construction work on the Non-Leased Space or alter, modify, or make additions, improvements, or major repairs to the Non-Leased Space or install any fixtures or personal property therein or thereto without the prior written permission of the University.

Cost of repairs related to abusive damage to Non-Leased Space caused by BPD will be the responsibility of the City.

There shall be no assignment or subletting of the Non-Leased Space.

Any right to occupancy will terminate commensurate with the termination or expiration of this Agreement.