OPERATING AGREEMENT BETWEEN BORDERLANDS RESEARCH FOUNDATION AND SUL ROSS STATE UNIVERSITY

THIS	AGR	EEME	NT,	(the	Agreen	nent)	is	made	and	entered	into	on	the	26	day	of
Au	gust		, 20	19 b	y and be	etwee	n B	Borderla	ands	Research	Four	ıdati	on, a	a Texas	non-pr	ofit
corpor	ation	(the "Fo	ounda	tion'	') and Si	ıl Ro	ss S	State U	niver	sity (the '	'Univ	ersi	ty").		-	

WHEREAS, the Foundation is organized and operated exclusively for charitable, educational and scientific purposes, and more specifically is operated exclusively for the following purposes:

- a) raising funds to support the mission and programs of Borderlands Research Institute (the "Institute") at the University;
- b) promoting the Institute as it fosters interdisciplinary scholarship and study related to the conservation and management of natural resources within the Chihuahuan Desert of the southwestern United States and north-central Mexico:
- c) providing funds in support of the operations as well as special projects of the Institute;
- d) assisting the Institute in other endeavors as the Board may deem appropriate:

within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, and successor federal statutes; and

WHEREAS, the University earnestly seeks the assistance of the Foundation in an effort to more effectively achieve its goals for the Institute; and

WHEREAS, the Foundation and the University will collaborate in the management of Foundation assets consistent with Paragraph 3 below;

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

1. Term of Agreement: Subject only to the provisions for termination as hereinafter set forth. the initial term of this agreement shall be for one year from the date of this agreement. Following the initial term, this agreement shall be subject to review and approval by the President of the University and the President of the Foundation Board of Directors, who shall make known objections and recommended changes, if any, to the other, no later than ninety (90) days prior to the expiration of the initial term. This agreement shall then continue on a month to month basis until such changes can be

agreed on by the parties or the contract is otherwise terminated as provided herein. If changes are not recommended, the term of this agreement shall be extended, without further actions by the parties hereto for successive twelve (12) month periods unless terminated as provided herein. Either party may terminate the Agreement at any time for any reason upon ninety (90) days prior written notice to the other party.

- <u>Fundraising</u>: It is understood and agreed that the Foundation shall look to the University for identification of the specific needs of the Institute which the Foundation may consider as part of any fund solicitations. The University understands the importance of long range planning and communication in fund solicitations and agrees to apprise the Foundation of specific needs of the Institute as reasonably soon as such needs are anticipated and/or identified.
- Services Provided by University: The Foundation intends to form a permanent component fund within the Texas Parks and Wildlife Foundation and its donors may do the same within other similar public charities. Accordingly, a significant part of its assets and other financial resources may be administered by those third party charities. To the extent that the Foundation accumulates financial assets in its own name, it may contract with the University to provide administrative support to the Foundation for day to day operations including the receipt and disbursement of funds in accordance with Foundation direction and the maintenance of appropriate bank accounts. bookkeeping, financial reporting, copying and mailing correspondence and solicitations, and filing any required tax returns. To the extent that services are provided by the University, the Foundation will reimburse it on a quarterly basis for the cost of providing such services in an amount to be mutually agreed upon by the Foundation and the University.
- <u>4.</u> <u>Independent Contractor:</u> It is understood and agreed that the Foundation and the University, their officers and agents, if any, shall act solely in the capacity of an independent contractor and not as an agent for the other.
- Notices: Any notice, request, demand or communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an officer of the Foundation or the University, as the case may be, or when deposited in the United States Postal Service mails, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Foundation and the University indicated hereunder or hereafter established.

As to the Foundation:

President

Borderlands Research Foundation

Sul Ross State University Alpine, Texas 79832

As to the University:

President

Sul Ross State University

P.O. Box C-114 Alpine, Texas 79832

<u>Assignment:</u> Neither this Agreement nor any interest therein may be assigned, transferred, or conveyed in whole or in part without the prior written consent of both parties.

7. Applicable Law: This agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Texas, except that nothing herein shall be construed as a waiver of the statutory or common law immunities of the Texas State University System or of Sul Ross State University, which immunities are hereby and hereto reaffirmed.

<u>8.</u> <u>Miscellaneous:</u>

- A. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term of condition in the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.
- B. The Agreement may be amended only by an instrument in writing specifically referring to the Agreement and executed by duly authorized representatives of both parties to this Agreement.
- C. Many provision of this Agreement shall, for any reason, be held to be in violation of any applicable law or the bylaws of the Foundation, that provision shall not be held to invalidate any other provision herein which shall remain in full force and effect.
- D. The headings of the several sections herein inserted are for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

President, Dr. Bill Kibler Sul Ross State University President, Allen W. Smith

Borderlands Research Foundation