

## Fund Agreement

This Charitable Fund Agreement (this "Agreement") is made and effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), at Dallas, Texas, between The Dallas Foundation, a Texas nonprofit corporation (the "Foundation"), and \_\_\_\_\_, a Texas nonprofit corporation ("\_\_\_\_\_").

WHEREAS, the parties to this Agreement have a common interest in the charitable and educational environment in the community and in serving charitable and educational purposes for the benefit of the County of Dallas, Texas;

WHEREAS, each party is classified by the Internal Revenue Service ("IRS") as a qualified charitable organization (as defined herein); and

WHEREAS, the Foundation's principal purpose is to receive and administer funds for various charitable and educational purposes and organizations primarily in the County of Dallas, various interested persons have expressed a desire to establish a fund in the Foundation to provide support for the operations of \_\_\_\_\_, and \_\_\_\_\_ is desirous of having the benefits of such a fund;

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

1. Establishment of the Fund. A fund shall be established on the books of the Foundation which shall be known as \_\_\_\_\_ (the "Fund"). The Foundation acknowledges receipt of the property listed in **Schedule A** as the initial property of the Fund (hereafter referred to as the "Initial Contribution") and \_\_\_\_\_ represents that the Contribution has not been subjected to restrictions whether by its donors or otherwise (the "Unrestricted Funds"). \_\_\_\_\_ further represents that it is not required to hold the Unrestricted Funds permanently or for any designated purposes other than charitable purposes within the corporate powers of \_\_\_\_\_ and that, therefore, in additions to its income, the principal may be expended in whole or in part.
2. Purpose of the Fund. The Fund shall be used only for charitable, educational, scientific, literary, or religious purposes (including any combination of such purposes and administrative purposes) within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") and in furtherance of the purposes of the Foundation, either directly by the Foundation or by contributions to other organizations for such purpose or purposes. Specifically, the Fund shall be used for support of the charitable or educational purposes of \_\_\_\_\_, in the manner set forth in Section 6, and subject to Sections 4 and 5.
3. Property of the Fund. The Fund shall include the Initial Contribution received herewith, such property as may from time to time be transferred to the Foundation by \_\_\_\_\_ for inclusion in the Fund, such property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by the Foundation, and all other undistributed income, appreciation, or depreciation from the foregoing property.

4. Control of the Fund. The Fund shall be the property of the Foundation, held by it as a component fund of the Foundation, and shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived therefrom, in accordance with the Foundation's Restated Certificate of Formation dated March 24, 2015 and Section 4.3 of the Bylaws of the Foundation dated June 15, 2015 (collectively the "Governing Instruments"), and all amendments and policies adopted by the Board of Governors of the Foundation under the authority of the Governing Instruments. The Foundation agrees that the Fund will be used consistent with this Agreement and the Fund's purpose as set forth in Section 2, subject to the Foundation's Variance Power, as described in Section 5.
  
5. Variance Power. This Agreement is subject to the Foundation's authority to vary the terms of the gift (the "Variance Power") as provided in the Governing Instruments. As stated in Section 4.3 of the Foundation's Bylaws, any recommendations for distributions "are advisory only, and . . . must further the purpose and mission of the Foundation, as expressed in the Foundation's Restated Certificate of Formation. The Board of Governors or its designee may in its absolute discretion accept or reject such recommendations. The Board of Governors shall have full and absolute discretion to exercise the power to distribute such contributions as the Board of Governors deems appropriate, notwithstanding any such recommendations."
  
6. Investment and Administration. The Foundation shall cause the assets of the Fund to be invested and reinvested pursuant to the Governing Instruments and the investment policies, practices and procedures consonant therewith as adopted from time to time by the Board of Governors. The Foundation shall have all powers necessary or in its sole discretion desirable to carry out the purposes of the Fund including the power to invest and reinvest in such manner as it deems fit, without being subject to investment restrictions, statutory or judicial, which would otherwise be applicable to a fiduciary and the power to commingle the assets of the Fund with those of other funds for investment purposes so long as the Fund is allocated its appropriate shares of principal and income. Notwithstanding the foregoing, the Foundation shall make all reasonable efforts to ensure that the assets of the Fund are not invested in a manner resulting in the Fund having excess business holdings within the meaning of Sections 4943(c) and 4943(e) of the Internal Revenue Code.
  
7. Distributions. Assets in the fund will be available for distribution. Notwithstanding any provision herein to the contrary, the Foundation shall distribute such amounts from the fund as may be required by law, whether by statute or regulation.

Recommendations for Fund distributions may be made by any of the following \_\_\_\_\_ Board members: the **President, President-Elect or Vice President, Treasurer and Secretary.**

Currently those positions are held by \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, respectively. Recommendations will be solely advisory and not binding on the Foundation. Each year, \_\_\_\_\_ will provide the

Foundation, in writing, the names and contact information of each new Board member.

The Foundation will grant funds directly to \_\_\_\_\_. Funds may not be used to benefit any specific individual, board member, advisor, officer, director, senior management, or related parties. The distribution policy shall at all times comply with all state and federal laws applicable to funds of this type.

8. Assessments of the Fund. It is understood that the Fund may be charged regularly for a proper allocation of direct and indirect expenses attributable to the creation and maintenance of funds of this type.
9. Responsibility for Payments. Except as the Foundation, in accepting an addition to the Fund from any source, shall otherwise agree in writing, \_\_\_\_\_ shall be responsible for the proper application of payments to it to such uses as individual donors may specify whether the same be from principal or income.
10. Definitions and Construction. As used in this Agreement:
  - a. “Qualified charitable organization” means an organization which the IRS has determined to be described in Section 501(c)(3) and which is other than a private foundation under Section 509(a) of the Internal Revenue Code.
  - b. Reference to any provision of the Internal Revenue Code shall be deemed references to the United States Internal Revenue Code of 1986, as the same may be amended from time to time, and the corresponding provision of any future United States Internal Revenue Code.
  - c. “Charitable purposes” shall include charitable, scientific, religious, literary or educational purposes within the meaning of Internal Revenue Code Section 501(c)(3), and for which gifts are deductible under Section 170(c)(2).
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and applicable provisions of the Internal Revenue Code.

IN WITNESS WHEREOF, each party hereto has executed this Agreement by its duly authorized officer effective as of the day and year first above written.

\_\_\_\_\_

The Dallas Foundation

\_\_\_\_\_, President

\_\_\_\_\_  
Matthew Randazzo, President & CEO

**SCHEDULE A**

Description of Property

Delivered to The Dallas Foundation  
Pursuant to Agreement  
Dated \_\_\_\_\_, 2019

(Check all that apply.)

- Check # \_\_\_\_\_ in the amount of \$ \_\_\_\_\_.
- Wire transfer in the amount of \$ \_\_\_\_\_.
- \_\_\_\_\_ shares of \_\_\_\_\_.
- Other (please describe): \_\_\_\_\_.