

Fund Agreement

The Dallas Foundation
3963 Maple Avenue, Suite 390
Dallas, Texas 75219-3209

Re: Endowed Scholarship Fund Agreement

Governors of the Foundation:

With this letter, the undersigned, whether one or more (the “Donors”) are delivering to The Dallas Foundation the property listed on Schedule A. This property constitutes an irrevocable gift to the Foundation upon your acceptance of the gift and the following terms and conditions:

1. Establishment of the Fund. A fund shall be established on the books of the Foundation that shall be known as the _____ **Scholarship Fund** (the “Fund”). [Include statement of purpose here, such as: *The purpose of the Fund shall be to provide scholarships to African American and Hispanic students from West Dallas.*]
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.
3. Property of the Fund. The Fund shall include the property delivered with this letter, any other property which hereafter may be transferred to the Foundation for inclusion in the Fund and accepted by the Foundation for inclusion in the Fund, and all undistributed income from all such 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 Restated Certificate of Formation dated March 24, 2015 and Bylaws 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.
5. Scholarship Policies and Procedures. Donors acknowledge that they have been provided with a copy of the Foundation’s Scholarship Policies and Procedures, which are incorporated by reference into this letter agreement.
6. Endowed Fund; Distributions. The Foundation shall calculate annually the amount available for distribution from the above Fund(s), based on the endowed fund distribution policy established by the Foundation’s Board of Governors, as it may be revised from time to time. Currently the distribution policy is 5%, net of fees, of the average market

value of the marketable securities for the previous 12 quarters, to be determined at the end of each fiscal year for the ensuing fiscal year. Until the Fund has been established for 12 quarters, the 5% calculation will be based on the average market value of the quarters to date.

7. Committee. A committee (the “Scholarship Committee”) based on circumstances, needs or opportunities deemed sufficient to it, may recommend and request to the Board of Governors of the Foundation (the “Board”) distributions in accordance with Section 6 of this letter agreement from the Fund.
- a. The Board of the Foundation will grant such a request if it concludes, upon independent review, that such distribution is consistent with the charitable purposes of the Foundation.
 - b. The Scholarship Committee may elect not to recommend any scholarships in a particular year if the Committee believes that an insufficient number of qualified applicants are available.
 - c. The Board of the Foundation must appoint the members of the Scholarship Committee. The Donor may suggest members of the Scholarship Committee, and the Foundation may accept or reject any suggestions. The Donor recommends that the initial members of the Scholarship Committee include _____

_____.
 - d. Related parties may sit on the Scholarship Committee, but cannot constitute a majority of the Scholarship Committee. Related parties are defined as (a) related by blood, marriage, or adoption to a scholarship applicant or a Donor; (b) receiving a direct or indirect financial benefit from recommending a scholarship to a particular applicant; (c) any other disqualified person within the meaning of Section 4958(f)(7) of the Internal Revenue Code; or (d) due to personal or business relationships, or any other reason, the member exerts influence to recommend a recipient without regard to the scholarship criteria.
 - e. If a Scholarship Committee member has an actual or potential conflict of interest concerning an applicant, the member will disclose the conflict to the rest of the committee. The member shall not discuss the scholarship applicant with anyone on the committee and will not participate in, or be present during, any committee deliberations concerning that applicant.
8. Variance Power. The Fund is subject to the Foundation’s authority to vary the terms of the gift (the “Variance Power”). 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.” The Foundation shall promptly notify the Donor of any decision to exercise the Variance

Power. The Foundation shall deliver the notice in writing to the last known address of the Donor within 30 days following any decision of the Board exercising the Variance Power.

9. Investment and Administration. The Foundation shall cause the assets of the Fund to be invested and reinvested pursuant to its 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 Foundation 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.
10. Assessments of the Fund. The Donors agree that the Foundation may charge the Fund regularly for a proper allocation of direct and indirect expenses attributable to the creation and maintenance of funds of this type.
11. Transfers to Other Charities. Upon prior written notice to the Fund, the Foundation will transfer the initial contribution or other principal contributed by the Donor to the Fund, either in whole or in part, to another qualified charitable organization, as defined as, an organization which the Internal Revenue Service 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, under the following circumstances only:
 - a. The Foundation shall fail to carry out the terms of this Agreement;
 - b. The Scholarship Committee requests such transfer and the Foundation agrees that it is in the best interest of the Fund and in accordance with the charitable purposes of the Foundation; or
 - c. Other circumstances occur which, in the sole discretion of the Board of the Foundation, make such transfers desirable and in the best interest of the Donor, Fund, and the Foundation.
12. Construction. The Donors and the Foundation intend that the Fund shall be a component part of the Foundation and not a separate trust, and that nothing in this letter agreement shall affect the status of the Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code, and as an organization which is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code. This letter agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Foundation is authorized, acting alone, to amend this letter agreement solely to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention. References herein to

provisions of the Internal Revenue Code, shall be deemed references to the corresponding provisions of any future Internal Revenue Code.

13. Change of Tax Exempt Status. Should the Foundation lose its tax-exempt status as an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended, and as an organization that is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, or otherwise cease to exist, the Board of Governors of the Foundation shall cause all assets remaining in the Fund to be distributed to the legal successor in interest to the Foundation, so long as that successor is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code and is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, to be used for the purposes outlined in Section 2. Should the successor in interest lose such tax-exempt status or cease to exist, then all assets remaining in the Fund shall be distributed outright to charitable organizations qualified as Section 501(c)(3) organizations under the Code that have purposes as similar as possible to those purposes listed in Section 2. Nothing in this Section 13 shall diminish the Foundation's Variance Power, as described in Section 8, above.
14. Governing Law. This letter 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.

Please indicate below your acceptance of this gift and of the foregoing terms and conditions.

Very truly yours,

Donor

Printed Name: _____

Accepted this _____ day of _____, 20_____. Receipt of the above-described property on this date is acknowledged.

THE DALLAS FOUNDATION

Mary M. Jalonick
President & CEO

SCHEDULE A

Description of Property

Delivered to The Dallas Foundation

Pursuant to Letter

Dated _____, 20____

(Check all that apply.)

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