

_____ **Fund Agreement**

This Agency Agreement is made and effective on the _____ day of _____, 20____ (the "Effective Date"), at Dallas, Texas, between The Dallas Foundation (the "Foundation"), a Texas nonprofit corporation, and _____ (the "Agency").

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 the Agency, and the Agency 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 _____ **Fund** (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").

The Agency represents that the Initial Contribution in the amount of \$_____ has not been subjected to restrictions whether by its donors or otherwise (the "Unrestricted Funds"). The Agency 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 the Agency 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, subject to Section 6 hereof, the Fund shall be used for support of the charitable or educational purposes of the Agency.

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 the Agency 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 Restated Certificate of Formation dated March 24, 2015 and Section 4.3 of the 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. Distributions. While it is the Agency’s suggestion that the Fund be treated similar to a perpetual endowment, the entire balance of the Fund shall be available for distribution to the Agency if such a distribution is in the best interest of the Agency. The Foundation shall calculate yearly the amount available for distribution from the above Fund(s), based on the 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. The Agency may recommend an alternative distribution policy to the Foundation. The Agency may also recommend that distributions be made more often, or less often, than annually. Recommendations by the Agency are solely advisory and not binding on the Foundation. The distribution policy shall at all times comply with all state and federal laws applicable to funds of this type.
6. Variance Power. This Agreement is subject to the Foundation’s authority to vary the terms of the gift (the “Variance Power”) as described in the Foundation’s 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.” The Foundation shall promptly notify the Agency of any decision to exercise the Variance Power. The Foundation shall deliver the notice in writing to the last known address of the Agency within 30 days following any decision of the Board of Governors exercising the Variance Power.
7. 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.

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, the Agency 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.
 - a. As used in this Agreement:
 - (1) “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.
 - (2) 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.
 - (3) “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).
 - b. It is intended 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.
11. 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 Agency, so long as the Agency 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. If the Agency does not have such tax-exempt

status or ceases 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 12 shall diminish the Foundation's Variance Power, as described in Section 6, above.

12. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by its duly authorized officers effective as of the day and year first above written.

AGENCY

Printed Name and Title:

THE DALLAS FOUNDATION

Mary M. Jalonick
President & CEO

SCHEDULE A

Description of Property

Delivered to The Dallas Foundation
Pursuant to Agreement
Dated _____, 20____

(Check all that apply.)

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