

- c) As provided in the Foundation Articles of Incorporation, Article III, Section 6, the Executive Director is responsible to the Chairman and Executive Committee of the Foundation and is supervised by the Executive Committee. But by signing this Agreement, the Foundation does hereby delegate its oversight and supervision of the Executive Director to the Chancellor of the District. In accordance with the District's policies, regulations, and other rules, the Chancellor shall evaluate the work of the Executive Director.

Support for Foundation Operations: For the purposes of permitting the Foundation to engage in activities that promote the mission of and contribute to the District, its activities, students and employees, the District agrees to provide the following:

- a) Assignment of District Employees to Staff the Foundation: The District agrees to assign District employees as reasonably necessary to support the Foundation's operations and activities performed on behalf of the District as follows.
 - i. Management and professional direction.
 - ii. Clerical support.
 - iii. Internal financial records keeping.
 - iv. Public relations and media relations.
- b) With respect to all staff assigned to the Foundation, the District shall follow all of its personnel policies and procedures. The Executive Director shall be responsible for the hiring, supervision and direction of the staff. The Chancellor of the District will involve the Foundation Board of Directors in the selection and evaluation of the Executive Director and shall seek its input prior to the Chancellor's annual evaluation of the Executive Director.
- c) Provision of Office Space and Related Items: As the most cost effective means to permit the District and Foundation to pursue their common goals, the District shall provide office space, access to necessary meeting space, and use of the District's telecommunications system, on-site copying machines, and computing/electronic mail system.
- d) Inclusion of Foundation as an Additional Insured Under Specific District Insurance Policies: In order to enable the Foundation to attract a high quality Board and to be able to engage in fundraising activities that directly benefit the District and its activities, the District shall include the Foundation as an additional named insured under its Educators Legal Liability and Commercial General Liability Policy. The District's schedule for its property insurance policy shall include all District provided and purchased equipment, furniture and other property provided for use by the Foundation.

Acceptance of Funds from Foundation: The District shall accept funds from the Foundation for the purpose of promoting the well being and advancement of the District and the colleges comprising the District, and to improve the operations so as to provide expanded educational advantages and opportunities; encourage teaching, scholarship, and service; and increase the District's services to the taxpayers and residents of District.

- a) The District shall ensure that any legally restricted funds are expended strictly in accordance with the terms and conditions as may be imposed by a testator or donor;

- b) All nonrestricted funds that are provided for the use of the District shall be expended in a manner that exclusively serves the charitable or educational public purposes of the District.
- c) The District shall, upon request of the Foundation, account for the expenditure of funds provided to District by Foundation.

II. RESPONSIBILITIES OF FOUNDATION

Foundation Operations: Consistent with the Foundation's Articles of Incorporation (October 23, 1973), the Foundation's sole and only operations will be to provide financial, programmatic and other assistance for and to the District in fulfilling its role in serving its students, faculty and taxpayers. The Foundation will collect, manage the investments and distribute to the District funds and assets contributed or given to the Foundation by and from all sources other than those required for the reasonable operation of the Foundation in accordance with the specific terms of a gift or contribution. It is the intent of the parties that the Foundation will handle and coordinate fundraising activities for the District, except for the activities described below:

- a) Fundraising conducted by students groups and clubs;
- b) Fundraising conducted by employee groups; (If, however, an employee group raises proceeds that exceed the amount enumerated in the Business Procedures Manual, as amended, the group shall send those proceeds to the Foundation.)
- c) Grants from federal and state governments; and
- d) Other fundraising activities mutually agreed not to be the responsibility of the Foundation.

Compliance with Donor Restrictions on Gifts and Relevant State and Federal Laws:

- a) The Foundation is responsible to establish and implement a system of controls that ensure compliance with restrictions placed by a donor on a gift, applicable laws and regulations, specifically including state and federal laws regarding its non-profit, tax-exempt status.
- b) The Foundation will keep in full force and effect its exemption and status under Section 501(c)(3) under the Internal Revenue Code and will take no action which would cause this exemption to be revoked or limited.
- c) The Foundation Board will exercise due care in the management of the corporation's affairs, including:
 - i. The preparation, distribution and reporting of annual and financial reports, necessary to ensure compliance with the Texas Trust Code and the Texas Nonprofit Corporation Act; and
 - ii. The conduct of an annual audit by an independent professional auditor, a copy of which shall be provided to the District through the Executive Director.
- d) Funds and resources collected by the Foundation or transferred to the Foundation by the District shall be held and invested pursuant to a legally appropriate, written investment policy, which the Foundation has previously established or shall establish and communicate to the District within 180 days of the effective date of this Agreement.

Use of Foundation Earnings or Assets:

- a) Foundation will not provide any form of financial compensation regardless of how titled to any District officer or employee without the prior written approval of the District Board of Trustees.
- b) Under no circumstances shall any of the earnings or assets of the Foundation inure to or be distributed to the benefit of its directors, officers, or other private persons, except that the Foundation is authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the overall purpose of the Foundation.

Transfer of Donations Received by District:

- a) District may transfer unrestricted gifts made to the District to the Foundation if the Foundation agrees to use the funds in furtherance of District's public purposes and if the District is provided annual reports documenting that the funds were actually so used.
- b) The District may transfer restricted gifts to the Foundation if:
 - i. the funds retain the restrictive use originally assigned by a donor;
 - ii. the retention of the funds would substantially impair the intended use of the funds; and
 - iii. the District has been permitted by a court of competent jurisdiction to so transfer the funds.

Fundraising Activities: The Foundation will conduct fundraising and resource raising campaigns, drives and efforts on behalf of the District. The activities and events will be reviewed with the District's Chancellor prior to implementation of activities in accordance with District policy and regulation.

Distribution of Assets to District Upon Dissolution: In the event of the dissolution of Foundation, all of the assets of the Foundation including stock, property, real estate, intellectual property and future interests in property, shall be distributed and paid over to the District in accordance with the Articles of Incorporation to the greatest extent permitted by law.

Protection of Student Confidentiality Rights: The Foundation acknowledges that it will periodically be provided information regarding students for consideration of financial support that is legally protected from disclosure under the Family Educational Rights and Privacy Act 20 U.S.C. 2032g and agrees to take steps to ensure that such information is provided to persons within the Foundation with legitimate educational interests only.

III.

MUTUAL RESPONSIBILITIES

Responsibility for Activities and Liabilities: The District and Foundation agree that at all times each party is responsible for their own activities and liabilities and that neither party is authorized to seek payments or indemnification from the other for claims arising from the activities undertaken pursuant to this agreement. With the exception of responsibilities specifically undertaken pursuant to this agreement, each party shall be solely responsible for defending, and paying any damages arising from its activities or from any and all claims and

damages arising from the actions for which it has accepted responsibility. The terms of this agreement do not constitute a waiver of any immunity to which either party may be entitled as a matter of law.

Civil Rights Responsibilities: The District and Foundation will each take appropriate steps to ensure that it does not discriminate in any of its benefits, programs or activities against any person because of race, religion, national origin, color, gender, national origin, sexual orientation, veteran's status or age. The District and the Foundation are each responsible to have in place a complaint, investigation and resolution process that meets the requirements established by state and federal law and that it will take prompt steps to remedy any discrimination that is identified. The Foundation is to cooperate in any investigation conducted by the District regarding allegations of discrimination or disparate treatment.

IV. NOTICES

Unless either party is otherwise notified in writing by the other party, all notice and communications under this Agreement shall be mailed or delivered to:

For District:
Chancellor
701 Elm Street
Dallas, Texas 75202

For Foundation:
Chairman, Valerie M. Freeman

V. TERM OF AGREEMENT AND TERMINATION

1. The term of this Agreement begins on its effective date and shall continue five years, unless amended in written form and executed by each party.
2. This agreement shall be terminated in the following manner during the term of the agreement:
 - a) If the Foundation is treated as a private foundation as a result of Section 509(a) of the Internal Revenue Code, upon the written notice provided by the District;
 - b) If the District ceases to be an organization described under Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code or if the District is dissolved or otherwise ceases to exist, this agreement shall be terminated upon the written notice of either party.
 - c) Immediately by the District for fraudulent or otherwise illegal conduct by the Foundation Board of Directors upon provision of written notice with documentation supporting the allegations of improper conduct. If the agreement is terminated under these circumstances, the Foundation is prohibited from

using the District's name to solicit donations or for any other purpose and not represent in any way to alumni, contributors or the general public that the Foundation is affiliated with the District or any of its component parts.

**VI.
MISCELLANEOUS PROVISIONS**

1. Choice of Law and Venue: This Agreement is made and will be performed in the State of Texas and shall be construed in accordance with the laws of the State of Texas. The parties agree that this Agreement is enforceable in Dallas County, Texas. If legal action is necessary to enforce it, exclusive venue will lie in Dallas County, Texas.
2. Waiver. No waiver of any right or remedy on one occasion by either party shall constitute a subsequent waiver of such right or remedy on any other occasion.
3. Assignment. This Agreement is not assignable by either party, in whole or in part.
4. Severability. If any provisions of this Agreement are held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.
5. Relationship Between the Parties. Neither party has the right nor authority to, and shall not assume or create any obligations of any nature on behalf of the other party, or bind the other party in any respect. The District and the Foundation agree that at all times and for all purposes in the performance of this Agreement each is acting in an independent capacity and not as the agent or representative of the other.
6. Headings. The headings provided in this Agreement are for convenience only and will not be used in interpreting or construing this Agreement.
7. Modification of Agreement. This Agreement may only be modified by a written document executed by the parties. The parties acknowledge that procedures will be jointly prepared to guide the operation of specific accounts maintained by the Foundation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple counterparts, signed by and through their duly authorized agents, thereby binding themselves, their successors and assigns and representatives for the faithful and full performance of this Agreement.

DALLAS COUNTY COMMUNITY COLLEGE DISTRICT

By: _____
Chair, Board of Trustees

ATTEST:

_____.

SEAL

DALLAS COUNTY COMMUNITY COLLEGE DISTRICT FOUNDATION

BY: _____
President, Board of Directors

ATTEST

(Seal)