

OPERATING AGREEMENT

Between Dallas College and Dallas College Foundation

This Operating Agreement ("Agreement") is entered into on this 10th day of May, 2022 and is by and between Dallas College, a Texas political subdivision of higher education with administrative offices located at 1601 Botham Jean Blvd., Dallas, Texas 75215 (the "College" or "Dallas College") and Dallas College Foundation, a Texas nonprofit corporation (the "Foundation"). The College and the Foundation may hereafter be individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Dallas College was created by the voters of Dallas County and founded in 1965 to support the local and regional economy and to serve the educational needs of communities located in North Central Texas; and

WHEREAS, the Foundation is a private, nonprofit organization, tax-exempt in accordance with 26 U.S.C.A. § 501(c)(3) (2010) of the Internal Revenue Code of 1986, as amended, established in 1973 for the primary purpose of generating, receiving, holding, investing, managing and allocating funds for the benefit and advancement of the College, and is operated separately and independently of the College; and

WHEREAS, the Parties desire to formalize their relationship to achieve an efficient coordination between them to foster the educational, social, and cultural programs and services of the College; and

WHEREAS, the purpose of this Agreement is to define the nature of the relationship and exchange of services between the College and the Foundation.

NOW, THEREFORE, in consideration of the mutual covenants and commitments of the College and the Foundation contained herein, the mutual benefits to be gained by the performance hereof, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. GOVERNANCE AND ROLE OF THE CHANCELLOR AND COLLEGE LEADERSHIP IN FUNDRAISING

- A.** The Board of Trustees of the College is responsible for overseeing the mission, leadership, and operations of the College and, in connection therewith, delegates to the Chancellor certain duties and responsibilities.
- B.** The Board of Trustees of the College is responsible for setting priorities and long-term plans for the College.

- C.** The Board of Trustees of the College is legally responsible for the performance and oversight of all aspects of College operations.
- D.** The Board of Trustees of the College is responsible for the employment, compensation, and evaluation of all College employees, including the Dallas College Chancellor (the “Chancellor”).
- E.** The Foundation is the principle private, affiliated, philanthropic, fundraising organization for Dallas College, as set forth in this Agreement.
- F.** Each Campus President and other College leaders wishing to conduct private, philanthropic fundraising activities for campus-specific projects shall coordinate fundraising activities with the Foundation and the Chancellor and/or his/her designees, as set forth in this Agreement, with the Foundation retaining its role as the principal private, affiliated, philanthropic fundraising organization for Dallas College, pursuant to the terms of this Agreement.

2. THE FOUNDATION’S RELATIONSHIP TO THE COLLEGE

- A.** The Foundation is a separately incorporated Texas nonprofit corporation, exempt from federal income tax pursuant to Code Section 501(c)(3), created to raise, manage, distribute, and steward private resources to support the various missions of the College. In that regard, the Foundation shall support the College, as well as the programs and initiatives of the College.
- B.** The Foundation's Board of Directors is responsible for the control and management of the affairs and assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
- C.** The activities and operations of the Foundation shall be the responsibility of its Board which will delegate day-to-day operations to the Foundation’s Executive Director (the “Executive Director”). The Executive Director shall be responsible for: (1) developing Foundation proposed fundraising activities or strategies in collaboration with the Chancellor; (2) developing a College budget with appropriate support for Foundation activities; (3) coordinating Foundation requests for College data or other information collected by the College for the purpose of developing fundraising materials or communications; and (4) hiring, supervision, and direction of the activities of College employees provided and assigned to the Foundation.
- D.** The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws and policies that clearly address the Board's fiduciary responsibilities, including expectations of individual Board members based upon applicable ethical guidelines and policies.

- E. The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the Chancellor of the College and may transfer those funds to the College upon prior written approval by the Treasurer of the Foundation, which approval shall not unreasonably be withheld, conditioned or delayed, and in compliance with applicable law and College policies and such funds shall be audited as part of the Foundation's annual audit.

3. THE COLLEGE'S RELATIONSHIP TO THE FOUNDATION

- A. The College is responsible for communicating College priorities and long-term plans, as approved by its Board of Trustees, to the Foundation.
- B. The College formally designates, pursuant to this Agreement, the Foundation as the principal private, philanthropic fundraising organization for Dallas College.
- C. The College recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential consistent with applicable law.
- D. For and in consideration of the services provided to the College by the Foundation, a College employee with the title of Executive Director of the Foundation (the "Executive Director") shall be assigned by the College to the Foundation. It is understood and agreed that the Executive Director, in addition to duties and responsibilities as Executive Director of the Foundation, shall have duties and responsibilities as an employee of the College as outlined in the Executive Director's employment contract. It is further understood and agreed that the College's Board of Trustees considers and acts upon the Chancellor's recommendations concerning appointment, retention, or dismissal of College employees, including the Executive Director.

Notwithstanding the foregoing, when a vacancy in the position of Executive Director arises, the Executive Committee of the Foundation Board, in collaboration with the Chancellor, shall identify through a mutually-agreeable, collaborative process, a candidate for the position of Executive Director, which candidate then is eligible for consideration to be employed by the College as Executive Director in accordance with College Policies. The Executive Director, as a College employee, will report to and be managed in connection with his/her duties for the College by the Vice Chancellor of Workforce & Advancement for the College. Administrative oversight and direct supervision of the same individual in his or her role as Executive Director of the Foundation will be and same hereby is delegated to the Foundation's Board of Directors. The Chancellor will work collaboratively with the Executive Director on matters related to the Foundation and to give effect to the purpose of the Foundation which is to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, the College.

- E.** Should the Foundation identify issues or concerns related to the performance or conduct of the Executive Director which the Foundation believes should result in a materially adverse change in the terms and conditions of the Executive Director's employment, up to and including the termination of employment, the Foundation shall notify the Chancellor in writing of such concerns or issues. Upon receipt of such notification, the College shall promptly undertake to reasonably investigate such concerns and issues in accordance with the applicable College policies and procedures. If, after such investigation, the College finds that the concerns and issues identified by the Foundation are reasonably supported and meritorious, the College may take any and all appropriate action regarding the employment of the Executive Director, up to and including termination of employment. The Foundation shall cooperate with the College in any investigation conducted hereunder and may, upon written request directed to the Chancellor, be provided with a confidential report on such investigation. Nothing contained herein is intended to usurp the authority of the College's Board of Trustees as it relates to the employment of employees of the College. Should an investigation conducted under this Section result in the termination of the employee of the Executive Director, the College will identify a new candidate for the position of Executive Director in accordance with the collaborative process identified in Section 3D above.
- F.** For the purpose of enabling the Foundation to engage in activities that promote its mission, and that of the College, and to enable the Foundation to contribute to the College, its activities, students and employees, the College shall provide and assign additional employees of the College to the Foundation in such number as may be reasonably necessary to support the Foundation's operation and activities, including, without limitation, management and professional direction; clerical support; internal financial record-keeping; public relations and media relations; and fundraising.
- G.** The College shall include the Foundation as an active and prominent participant in the strategic planning for the College.
- H.** The Chancellor of the College shall serve as an ex-officio, non-voting member of the Foundation Board of Directors and shall, assume a prominent role in and have ultimate control over fundraising activities for the College.
- I.** In consideration for Foundation services including but not limited to fundraising, asset management, providing opportunities for institutional flexibility, and transfer of funds, the College will, in addition to the assignment of employees to the Foundation, as described hereinabove, provide the Foundation with in-kind support at no charge including office space, access to necessary meeting space, and technology including, without limitation, use of the College's telecommunications system, on-site copying machines, and computing and electronic mail system. The information, data, and records maintained by the Foundation on technology and other computing equipment provided by the College to the Foundation pursuant to

this provision shall be owned by the Foundation and the College will take reasonable measures to segregate and maintain the identity of such information and records as being the property of the Foundation. The Foundation's donor database shall be stored and maintained on technology resources separate and distinct from the College's data or technology.

- J. The College shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.
- K. The College shall include the Foundation as an additional insured under the College's Educators' Legal Liability and Commercial General Liability policies. The College's schedule for its property insurance policy shall include all College-provided and purchased equipment, furniture and other property provided for use to the Foundation.
- L. To ensure effective achievement of the terms of this Agreement, the College and Foundation officers and Board representatives shall use reasonable efforts to hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

4. FOUNDATION RESPONSIBILITIES

A. Fundraising

- i. The Foundation shall actively cultivate an environment conducive to increasing levels of private support for the mission and priorities of the College.
- ii. The Foundation, in consultation with the College's Chancellor is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the College's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- iii. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College and provide appropriate recognition for and stewardship of such gifts.
- iv. The Foundation and the College recognize that the Foundation bears major responsibility for fundraising. College representatives, including the Chancellor and Campus Presidents will coordinate fundraising initiatives including major gifts solicitations with the Foundation.
- v. The Foundation shall solicit and accept (whether by way of outright, limited or conditional gifts, grants and bequests, in trust or otherwise) things of

value of all kinds, including property, both real and personal, whether principal or income, tangible or intangible, vested or contingent, within the limits of the law, for the purpose of providing funds for the general purposes of the Foundation and for purposes of providing scholarships, activities related to research, or such other designated benefits for the College and its faculty, staff and students, as may be prescribed by testators or donors to the Foundation.

- vi. The College's Chancellor and the Campus Presidents will work in conjunction with the leadership of the Foundation Board and the Foundation Executive Director to identify, cultivate, and solicit prospects for private gifts.
- vii. The Foundation may coordinate fundraising or participate in activities related to the following:
 - 1. Fundraising conducted by student groups and clubs;
 - 2. Fundraising conducted by employee groupsprovided that the funds raised be used to enhance the mission of Dallas College and Dallas College Foundation and are for the benefit of Dallas College students or employees.
- viii. The Foundation shall establish and enforce policies to protect donor confidentiality and rights.
- ix. The Foundation shall procure and maintain in full force and effect Directors & Officers Liability Insurance with commercially reasonable limits of coverage during the Term of this Agreement.

B. Asset Management

- i. The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act ("UPIA") and the Uniform Prudent Management of Institutional Funds Act ("UPMIFA").
- ii. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred- gift instruments.
- iii. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records necessary to comply with the Texas Trust Code and the Texas Nonprofit

Corporation Act, and will provide the College with a copy of the annual audited financial statements, including management letters.

- iv. The Foundation shall 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, without limitation, state and federal laws regarding the Foundation's nonprofit, tax-exempt status.
- v. The Foundation will keep in full force and effect its exemption and status under Code Section 501(c)(3) and will take no action which would cause this exemption to be forfeited, revoked or limited.
- vi. The Foundation shall not provide any form of financial compensation, with the exception of awards for merit or outstanding service through a predetermined vetting and selection process, to any College officer or employee and in accordance with applicable law.
- vii. Under no circumstances shall any of the earnings or assets of the Foundation inure to the benefit of, or be distributed to, any of its directors, officers, or any other private persons, provided 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.

C. Institutional Flexibility

- i. The Foundation will explore current opportunities, including acquisition and management of real estate on behalf of the College for future allocation, transfer, or use.
- ii. The Foundation may serve as an instrument for and engage in activities such as purchasing, developing, or managing real estate for College expansion, it may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by third parties, or engage in other activities to increase Foundation revenue.
- iii. When distributing gift funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The College will abide by such restrictions and provide appropriate documentation.
- iv. To the maximum extent allowed by applicable law, the Foundation will provide access to Foundation data and records to the College on a need-to-know basis in accordance with applicable law, Foundation policies, and guidelines, provided that, the provision of such data and records will only be done in a manner reasonably calculated to maintain the confidentiality

of such information to the extent the information is confidential and protected under applicable law.

D. Fund Expenditures

- i. The Foundation is the primary depository of private gifts and will expend funds on behalf of the designated entity within the College or reimburse a department for expenditures in compliance with applicable laws, College policies, and gift agreements.
- ii. For private grants, the Foundation may rely on the Contracts & Grants division of the College to expend funds earmarked for personnel, student tuition, stipends, and other funds directed toward students or employees. Dallas College will set-up a budget in a Fund 13, expend funds as outlined in the grant, and ensure appropriate transmittal of funds. Dallas College will reconcile all expenditures and invoice Dallas College Foundation on a monthly basis.
- iii. The Foundation's disbursements on behalf of the College must be reasonable business expenses that support the College, are consistent with donor intent, and do not violate applicable law.

5. ACCEPTANCE BY THE COLLEGE OF FUNDS FROM THE FOUNDATION AND TRANSFER OF FUNDS RECEIVED BY THE COLLEGE TO THE FOUNDATION

- i. The College shall accept funds from the Foundation for the purpose of promoting the well-being and advancement of the College and to improve the operations so as to provide expanded educational advantages and opportunities; encourage teaching, scholarship, and service; and increase the College's services to the taxpayers and residents of College.
- ii. All non-restricted funds that are provided for the use of the College shall be expended in a manner that exclusively serves the charitable or educational public purposes of the College.
- iii. The College shall, upon reasonable request of the Foundation, account for the expenditure of funds in accordance with applicable law.
- iv. The College may transfer to the Foundation unrestricted gifts made to the College if the Foundation agrees to use the funds in furtherance of College's public purposes and if the College is provided annual reports documenting that the funds were actually so used.
- v. The College may transfer restricted gifts to the Foundation if:
 - 1. the funds retain the restrictive use originally assigned by a donor;

2. the retention of the funds by the College would substantially (i) impair the intended use of the funds or a change in conditions have rendered the restriction or intended use of the funds impossible or impractical, and (ii) not violate applicable law or the provisions of this Agreement; and
3. the College has been ordered by a court of competent jurisdiction to so transfer the funds.

6. DISTRIBUTION OF FOUNDATION ASSETS TO THE COLLEGE UPON DISSOLUTION

- A.** In the event of the dissolution of the 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 College in accordance with Article 4, Section 3 of the Foundation's Articles of Incorporation, to the greatest extent permitted by applicable law.

7. TERM AND TERMINATION

- A. Term of the Agreement:** This Agreement shall commence on the ____ day of _____, 2022 ("Effective Date") and shall continue in effect for a period of five (5) years (the "Initial Term") with an option for renewal of another five (5) years upon approval of both Parties (each a "Renewal Term"), unless earlier terminated as provided hereinafter.
- B. Termination for Convenience:** Except to the extent modified by this Agreement or a separate written agreement between the Foundation and the College, either Party may terminate this Agreement without cause by providing written notice to the other Party not less than six (6) months prior to the effective date of such termination.
- C. Termination for Cause by the College:** Except to the extent modified by this Agreement or a separate written agreement between the Foundation and the College, the College may terminate this Agreement for cause in the event the Foundation (i) commits a material and substantial violation of the terms of this Agreement, (ii) fails to cure repeated violations of this Agreement after being provided with thirty (30) days' notice of such violations, or (iii) engages in, or negligently allows its staff to engage in, any substantial misuse of funds or other fraudulent activity. The College may terminate this Agreement for cause by providing written notice to the Foundation not less than thirty (30) days prior to the effective date of such termination.
- D.** This Agreement shall be terminated in the following manner during the term of the Agreement:

- i. If the Foundation is treated as a private foundation as a result of Code Section 509(a), this Agreement shall be terminated upon the written notice provided by the College; and
 - ii. If the College ceases to be an organization described under Code Section 509(a)(1) or Code Section 509(a)(2) or if the College is dissolved or otherwise ceases to exist, this Agreement shall be terminated upon the written notice of either Party.
- E. Should the College choose to terminate this Agreement, for any reason other than cause as set forth above, the Foundation may require the College to pay, within 180 days of written notice, all debt incurred by the Foundation on the College's behalf and with the College's permission including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Agreement the College may require the Foundation to pay debt the College incurred on behalf of the Foundation and with the Foundation's permission in like manner.
- F. Upon termination of this Agreement, with or without cause, the Foundation shall:
 - i. Cease to use the College's name to solicit donations or for any other purpose and shall not in any way represent to alumni, contributors, and the general public that the Foundation is affiliated in any way with the Colleges or any other campuses, schools, departments and divisions comprising the College;
 - ii. Immediately return to the College all public funds (funds allocated to the Foundation by the College) which the Foundation holds as a depository under this Agreement; and
 - iii. Provide a reasonable accounting to the College of all funds, public (funds allocated to the Foundation by the College) or private (funds donated to the Foundation by individuals, corporation, or other foundations), held by the Foundation.
- G. If the termination is without cause: (a) transfer to the College or, upon the mutual written consent of the Foundation and the College, which consent shall not be unreasonably withheld, conditioned or delayed, to another nonprofit entity affiliated with the College, all funds and assets donated to the Foundation (or acquired with funds donated to the Foundation) which were donated to the Foundation because of its association with the College or (b) upon the mutual written agreement of the Foundation and the College, the Foundation may retain all funds but shall hold and use them in perpetuity for the benefit of the College. All funds and assets donated to the Foundation during the term of this Agreement and

any predecessor agreement shall be presumed to have been donated to the Foundation because of its association with the College. This sub-paragraph shall not prejudice any properly approved, valid and enforceable financing agreements executed by the Foundation. To the extent allowed by law, the College will honor all restrictions imposed by donors as a condition of any donation.

8. DALLAS COLLEGE NAME, SEAL AND LOGOTYPE

- A.** The Foundation will operate under its own name, seal and logotype, however, consistent with its mission to help advance the plans, priorities, and objectives of the College, the College grants to the Foundation a worldwide, fully paid-up, perpetual, non-exclusive, royalty-free, license, including the right to sub-license, to the name, "Dallas College," and the logotypes and intellectual property owned by the College, including any common law rights thereto (the "College Intellectual Property"), and any names and logotypes of the campuses (the "Campus Intellectual Property"), including any common law rights thereto, to fulfill the Foundation's obligations under this Agreement, until such time as the Foundation dissolves, the Foundation ceases to be recognized as a tax exempt organization, or the Dallas College Board of Trustees withdraws its designation of the Foundation pursuant to Section 3(B) above and the College terminates this Agreement.
- B.** Notwithstanding Section 9, to the extent permitted by the laws and Constitution of the State of Texas, the College shall indemnify the Foundation, its officers, and its directors, for all liability, penalties, losses, damages, costs, expenses, and attorneys' fees arising from any causes of action, claims or allegations, that the Foundation's use of the College Intellectual Property and Campus Intellectual Property as contemplated herein, infringe on any intellectual property rights of others.

9. MUTUAL RESPONSIBILITIES OF THE PARTIES

- A. Responsibility for Activities and Liabilities:** Subject to this Agreement, the College 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.

- B. Civil Rights Responsibilities:** The College and Foundation will each take appropriate steps to ensure that neither discriminates in any of its benefits, programs or activities against any person because of race, religion, national origin, color, gender, gender identity, gender expression, national origin, sexual orientation, veteran's status or age. The College 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 each agrees that it will take prompt steps to remedy any discrimination that is identified. The Foundation is to cooperate in any investigation conducted by the College regarding allegations of discrimination or disparate treatment.

10. CONFIDENTIAL INFORMATION AND PROTECTION OF STUDENT CONFIDENTIALITY RIGHTS

- A.** To the extent the Foundation receives from College or otherwise has access to, on behalf of College or in connection with the Foundation's performance under this Agreement, academic and other data pertaining to Students enrolled at the College ("College Records") protected or made confidential by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and the regulations promulgated thereunder, 34 CFR pt. 99, as each may be amended from time to time ("FERPA"), the College hereby designates the Foundation, for this purpose "only", as a "School Official" with "Legitimate Educational Interests" in; and the Foundation acknowledges and agrees that for the purposes of this Agreement, it will be designated as a "School Official" with "Legitimate Educational Interests" in such College Records. As a School Official with Legitimate Educational Interests, as those terms have been interpreted by the U.S. Department of Education under FERPA, the Contactor agrees to abide by the limitations and requirements imposed by 34 C.F.R. § 99(a) on School Officials. The Foundation further agrees to maintain such College Records in accordance with the requirements of FERPA. The Foundation agrees to regard all College Records as confidential and shall not disclose such College Records to any third party, except as permitted or required by this Agreement, required by law, or as otherwise authorize by the College, as appropriate in writing.
- B.** To the extent the Foundation receives from College or otherwise has access to, on behalf of College and in connection with the Foundation's performance under this Agreement, personally identifiable Student information ("PII") from a College Record, the Foundation agrees to comply with all provisions of FERPA and Texas law as they apply to PII, and to use such PII pursuant to this Agreement and in compliance with the terms and conditions of this Agreement and only for such purposes as may be authorized in this Agreement. As used in this Section, PII means that Student information identified as such in FERPA 20 U.S.C., Sec 1232g and specifically in the definition of "Personally Identifiable Information" in 34 C.F.R. 99.3. Only

authorized officers and employees of the Foundation with a legitimate interest in PII as delineated by the parameters of this Agreement shall view and have access to PII information. The Foundation understands that PII from College Records is confidential and cannot be disclosed by publishing such information in any way that allows individuals to be directly or indirectly identified. The Foundation shall not disclose PII in any way that causes a breach in confidentiality.

- C. The College recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential consistent with applicable law. The College shall comply with all applicable privacy acts, rules and statutes that support the Foundation's ability to protect the confidentiality of donor records. All information about donors, prospective donors, gift data, campaign assignments and notes, donor correspondence, and related information is the confidential property of the Foundation, whether maintained in paper or electronic form, or maintained on servers and equipment owned by the College, in accordance with all applicable laws.

11. GENERAL PROVISIONS

- A. **Amendment and Modification:** Any changes, modifications, revisions, or amendments to this Agreement, which are mutually agreed upon by the Parties to this Agreement, shall be incorporated by written instrument, executed and signed by both Parties to this Agreement.
- B. **Applicable 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.
- C. **Assignment:** This Agreement is not assignable by either Party, in whole or in part.
- D. **Compliance with Laws:** Each Party shall keep informed of and comply with all applicable federal, state or local laws and regulations in the performance of this Agreement.
- E. **Entirety of Agreement:** This Agreement consisting of eighteen (18) pages, Exhibit A, consisting of one (1) page; and Exhibit B, consisting of one (1) page, Exhibit C, consisting of one (1) page, Exhibit D, consisting of one page, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

F. Force Majeure: Neither Party shall be liable to perform under this Agreement if such failure arises out of causes beyond the control, and without the fault or the negligence of the nonperforming Party. Such causes may include, but are not restricted to, Acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall only become effective if the Party failing to perform immediately notifies the other Party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming Party. The Parties intend and agree that the College does not waive sovereign/ governmental immunity by entering into this Agreement and specifically retains immunity and all defenses available to it pursuant to Texas law and any other applicable laws.

G. 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:

If to the College:

Dallas College
Attn: Chancellor
1601 Botham Jean Blvd.
Dallas, Texas 75215

If to the Foundation:

Dallas College Foundation
Chair of the Board of Directors
1601 Botham Jean Blvd.
Dallas, Texas 75215

H. Severability: It is the express intent of the Parties that the provisions of this Agreement are fully severable. 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.

I. Sovereign/Governmental Immunity: Dallas College does not waive its Governmental/Sovereign Immunity by entering into this Contract and specifically retains all immunities and defenses available to it as a governmental entity pursuant to Texas law and all other applicable laws. The College fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement. Designations of venue, choice of law, enforcement actions,

and similar provisions should not be construed as a waiver of sovereign/governmental immunity. The Parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either Party, except that any ambiguity as to sovereign/governmental immunity shall be construed in favor of sovereign/governmental immunity.

- J. Third Party Beneficiary Rights:** The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to the Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement.
- K. Titles and Headings Not Controlling:** Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- L. Waiver:** The waiver of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- M. 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 College 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
- N. Implied Covenants:** By entering into this Agreement, the Parties acknowledge and accept that this Agreement includes the covenant of good faith and fair dealing. Furthermore, the Parties agree that the responsibilities and duties set forth herein are to be completed in a professional manner and in accordance with applicable professional standards.

[REMAINDER OF PAGE LEFT BLANK-SIGNATURE PAGES TO FOLLOW]

Signature Page

The Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this Agreement.


DALLAS COLLEGE



Monica Lira Bravo, Chair
Dallas College, Board of Trustees

Date 05/10/2022

ATTEST:



Justin H. Lonon, Chancellor
Dallas College

Date 05/10/2022

DALLAS COLLEGE FOUNDATION



Debbie Taylor, Chair
Dallas College Foundation

Date 5/10/2022

ATTEST:



Joshua Skolnick, Executive Director
Dallas College Foundation

Date 5/10/2022