

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

AFFILIATION AGREEMENT

This AFFILIATION AGREEMENT (“Agreement”) is entered into this First day of September 2019, between the College Station Independent School District, a Texas public independent school district and political subdivision of the State of Texas, (“District”), and the College Station ISD Education Foundation (“Foundation”), a Texas non-profit corporation exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code, under the following terms and conditions:

**ARTICLE I
PURPOSE OF AGREEMENT**

The purpose of this agreement is to facilitate cooperation between the District and Foundation regarding the mutual goals and benefits of the two parties, to memorialize the arrangement between the parties, and to maximize efficiency to benefit the citizens and taxpayers of the District. The District and Foundation acknowledge and agree that the use of the District’s public facilities by the Foundation serves the District’s public purpose and that the Foundation was created to support the District’s financial and educational mission.

The Board of Trustees of the District has identified the following educational public purposes for the District’s support of the Foundation:

1. The District must seek alternative sources of revenue in order to continue and/or enhance its quality education programs.
2. The Foundation’s activities in soliciting from the community and expending donations to benefit the District are closely related to and support the educational mission and functions of the District.
3. Maximization of alternative revenue sources requires strong community support.
4. Community involvement in raising money for educational programs and community support through the Foundation’s activities achieves a concurrent psychological and philosophical investment in the District.
5. Strong community support to assist the District in maximizing alternative revenue sources requires reciprocal commitment and support from the District.
6. The District has realized gains from its investment in the Foundation in excess of the support it has provided.
7. The Foundation has provided and will continue to provide funds to the District for educational projects, and other needs and programs of the District and the continuation of financial gains of the District requires a continued commitment from the District.
8. The community’s legitimate expectation is that District supports the Foundation through the Foundation’s limited use of District facilities, equipment, and personnel.

9. The community realizes the convenience in having the District allow use of its facilities by the Foundation.
10. Solicitations of additional revenue by Foundation personnel, if any, and the governing board of the Foundation relieve the fund-raising burden of the District's Superintendent, administrators, faculty and staff, leaving them free to focus on the District's educational mission.

ARTICLE II TERMS OF AGREEMENT

Unless terminated earlier as set for herein, this Agreement shall continue September 1, 2019 until August 30, 2022. ("Term"). Upon mutual written consent of the parties, the Agreement may be extended subsequent three-year terms.

ARTICLE III OBLIGATIONS OF THE DISTRICT AND FOUNDATION

The District and Foundation shall, to the greatest extent possible, maximize the taxpayers' resources by sharing available resources when mutually acceptable. The intent of this Agreement is that office facilities of the District will be provided to the Foundation to house the Foundation's Director and related administrative activities, providing these resources to the Foundation in consideration for the benefit received by the District from the Foundation. This arrangement shall be construed as broadly as possible to provide the widest possible range of cooperation and mutual benefit. By means of example and not by limitation, the following list shall identify programs and use of facilities to be covered by this Agreement:

District shall provide use of the following to the Foundation, with prior approval of the Superintendent or designee:

1. Office space in the Central Office for the Director and staff, including office furniture, computer, (with appropriate internet access) and telephone usage for local calls (and long-distance calls as approved by the District);
2. Conference rooms and training rooms for activities and meetings of the Foundation;
3. Use of the copiers in the Central Office for minor printing needs;
4. Personnel as set forth herein; and
5. Such other facilities and resources as approved by the Superintendent or designee.

Foundation Responsibilities:

1. Consistent with its organizational documents, the Foundation shall raise, invest, and endow funds exclusively for Foundation expenses and District purposes in accordance with the laws of the state of Texas and any applicable federal laws. The Foundation shall collect and authorize such funds to be used for educational and cultural projects in alignment with the District's goals and plans, institutional priorities, and projects and resource requirements as requested by or approved by the Superintendent and the District's Board of Trustees.
2. The Foundation will seek grant funding available exclusively to the Foundation for administrative costs, infrastructure costs, and utilities. Foundation further agrees to serve as a vehicle to provide grants to District teachers (and to the District as deemed appropriate) for innovative activities that the local operating budget cannot provide and to serve as a

conduit for student scholarship awards. These in-kind contributions are to provide consideration for the use of facilities of the District.

3. The Foundation shall care for the facilities provided by the District and assume responsibility for cost of repair related to vandalism or misuse during term of use. The Foundation shall not do any act that would create liability for the District or impose any liens on District property.
4. The Foundation shall coordinate in conjunction with District representative all scheduled usage of District-owned joint use in facilities in order to avoid conflict with primary use by District for school related activities.
5. Except for the limited support provided by the District through use of District personnel, facilities, and equipment, the Foundation will assume responsibility for the cost of its variable expenses, including the cost of fundraising campaigns and projects. The Foundation shall be solely responsible for the satisfaction of its own obligations and debt.
6. The Foundation shall have an accounting system in place to ensure financial activities are carried out and reported in accordance with generally accepted business and accounting practices.
7. The Foundation shall conduct an internal review of its financial activities as set forth in the Foundation's By-Laws, Article VIII, Section 8.02. Furthermore, the Foundation's governing board shall cause an external audit of the Foundation financial records to be conducted in alternating years as set forth in the Foundation's By-Laws, Article VIII, Section 8.02. The Foundation shall provide the District a copy of all audits it conducts or causes to be conducted. The books, records, documents, and procedures and practices of the Foundation relevant to or affecting this Agreement shall be subject to inspection by the Superintendent or his/her designee.
8. The Foundation will maintain liability insurance on the members of its governing board in an amount for similar boards of directors in the area in which the Foundation is located but no less than the amount required under Texas Civil Practices and Remedies Code § 84.007(g).

ARTICLE IV CONTROLS, SUPERVISION & COORDINATION

The District and the Foundation agree on the following controls to ensure that a proper public educational purpose is served by this arrangement including those set forth in Article III and IV of this Agreement. The amount and extent of any contribution made by the District to the Foundation shall be within the sole discretion of the District's Board of Trustees, which shall be monitored by the District and recorded in the District accounting records as support to the Foundation.

The Superintendent shall assign a District administrator to serve as a liaison to the Foundation and function as the Director of the Foundation when performing services related to the District's support of the Foundation but shall be an employee of the District in accordance with the terms and conditions of this Agreement. The Director shall be responsible for serving as liaison between the District and the Foundation, for responding to the Foundation's proposed fundraising activities or strategies; to the extent permitted by law, considering the Foundation's requests for District data or other information collected by the District in the course of conducting its educational and service responsibilities; and approving the use of the District's name in fundraising activities. The Foundation's governing board shall provide input to the Superintendent in the appointment and evaluation of the Director.

For the purposes of permitting the Foundation to engage in activities that directly support and contribute to the District, its activities, students and employees, the District agrees to assign other District

employees as reasonably necessary to support the Foundation's operations and activities performed on behalf of the District. Services provided by District employees may include management and professional direction, clerical support, internal financial record keeping, public relations and media relations, and event coordination. District employees assigned to assist the Foundation, including the Director, shall be District employees for all purposes. With respect to all District employees assigned to assist the Foundation, the District shall follow its personnel policies and procedures. The District shall be responsible for the hiring, supervision, direction, and evaluation of District employees assigned to assist the Foundation. The District Board of Trustees reserves the right to refuse to appropriate funds for support of the Foundation in any budget year.

The earnings or assets of the Foundation shall not be distributed to the benefit of its directors, officer, or other private persons; however, the Foundation may authorize reasonable compensation or reimbursement for services rendered and/or payments/distributions toward the overall purpose of the Foundation and payment of expenses for any member of the Foundation's governing board for activities related to service to or on behalf of the Foundation.

The Superintendent (or designee) and the Director (or President of the Foundation's governing board) will coordinate, as needed, to insure effective implementation of this Agreement. All regular custodial services and routine maintenance of the District facilities shall be at no cost to the Foundation. The Foundation agrees that it will not engage in any destructive or altering activity in the District's facilities or on District property. In the event of an event requiring security, such security personnel shall be provided by the event sponsor.

ARTICLE V MUTUAL RELEASE

The District and Foundation, only to the extent permitted by Texas law, agree to release each other from liability for all claims for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement.

ARTICLE VI NO WAIVER OF IMMUNITY

It is expressly understood and agreed that nothing contained in this Agreement shall be deemed to or operate to waive any immunity or defense that either party would be entitled to under law.

ARTICLE VII PROTECTION OF STUDENT CONFIDENTIALITY RIGHTS

The Foundation acknowledges that the District may provide information regarding students or personally identifiable information related to one or more students from time to time so that the Foundation may achieve its objectives for the benefit of the District and that such information regarding students is legally protected from disclosure under the Family Educational Rights and Privacy Act (20 U.S.C. § 2032g) ("FERPA"). As such, the Foundation agrees to take steps to ensure that such information is not disclosed or provided to any person without the consent and approval of the District's Administrative Liaison and only in accordance with FERPA.

ARTICLE VIII

NON-DISCRIMINATION POLICY

The District and the Foundation each will take appropriate steps to ensure that it does not discriminate in any of its benefits, programs, or activities against any person because of race, ethnicity, religion, national origin, disability, gender, 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.

ARTICLE IX RELATIONSHIP OF THE PARTIES

The District acknowledges and accepts the separate and independent nature of the Foundation, and the Foundation acknowledges and accepts the separate and independent nature of the District. Nothing in this Agreement shall be construed as forming or constituting a joint venture or partnership between the District and the Foundation. Neither party has the authority to bind the other party to any contract nor obligation except as expressly provided herein or upon written authority from the Districts' Board of Trustees.

ARTICLE X GOVERNING LAW; VENUE

This Agreement shall be governed by and interpreted in accordance with Texas law without regard to its choice of law provisions. Each party to this Agreement agrees that in any legal action or proceeding arising in connection with this Agreement or any performance, right or obligation under this Agreement, venue shall lie exclusively in Brazos County, Texas.

ARTICLE XI SEVERABILITY

If one or more of the provisions contained in the Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such fact shall not affect any other provision thereof and this Agreement shall be construed to the fullest extent permitted by law as if the stricken provision had never been contained herein.

ARTICLE XII MODIFICATION

This Agreement may be amended or modified only by the mutual agreement of both parties hereto in writing, such writing to be attached and incorporated unto this Agreement.

ARTICLE XIII ENTIRE AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter contained herein and supersedes all previous written and oral agreements, representations, and communications regarding this Agreement and the subject matter contained herein

ARTICLE XIV TERMINATION/FORCE MAJEURE

This Agreement may be terminated without further obligation and without penalty at any time before its expiration upon mutual written consent of both parties or by either party without cause with thirty (30) days

written notice to the other party. Additionally, at the election of the District's Board of Trustees, this Agreement may be terminated without further obligation and without penalty at the end of any fiscal year of the District upon thirty (30) days prior written notice to the Foundation. Neither party shall be responsible for damages or expected to fulfill its obligations under this Agreement should an act of God or other unforeseen catastrophe or event occur and cause such damage to prevent the performance of such obligation.

ARTICLE XV EXECUTION

This Agreement shall be executed by the duly authorized official(s) of District and Foundation as expressed in the approving resolution, order, motion or other official action of the governing body of such party.

The District and the Foundation agree that this Agreement may be executed in identical counterparts, each of which shall be deemed an original for all purposes, and both of which shall be considered to be one document.

By execution of this Agreement, the parties acknowledge that they have read and understand each provision, term, and obligation contained in this Agreement.

ARTICLE XVI HEADINGS AND CAPTIONS

The captions, numbering sequences, titles, paragraph headings, punctuation, and organization used in this Agreement are for convenience only, and shall in no way define, limit, or describe the scope or intent of this agreement or any part of it.

ARTICLE XVII NOTICES

All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Unless otherwise agreed in writing by the receiving party, notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) reputable overnight carrier, postage prepaid; (iii) facsimile (with confirmation of transmission by sender's facsimile machine); (iv) personal delivery (with written receipt confirming such delivery); and (v) electronic mail. Notice will be deemed to have been given (i) two business or school days after mailing as described in clauses (i) and (ii) above; (ii) on the date of personal delivery; or (iii) on the date of transmission of a facsimile or electronic mail if on a business or school day during normal business hours (or, if not, the next succeeding business day). The addresses for the parties are as follows:

District:

Dr. Clark Ealy

Superintendent
College Station Independent School District
1812 Welsh Ave
College Station, TX 77840
(979) 764-5455
(979) 764-5535 (fax)
Email: cealy@csisd.org

Foundation:

Teresa Benden
Director
College Station ISD Education Foundation
1812 Welsh Ave
College Station, TX 77840
(979) 764-5586
Email: tbenden@csisd.org

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement on the dates indicated below.

COLLEGE STATION INDEPENDENT SCHOOL DISTRICT:

By: _____
Jeff Harris, President Board of Trustees

Date _____

COLLEGE STATION ISD EDUCATION FOUNDATION:

By: Heather Simmen
Heather Simmen, President Board of Directors

Date 8-7-19