

MODIFIED AND RESTATED GRANT AGREEMENT

This Grant Agreement ("Agreement") is entered into by and between the **City of Arlington** ("City"), a Texas home-rule municipal corporation, and **Arlington Tomorrow Foundation, Inc.** ("Foundation"), a Texas non-profit corporation. The City and the Foundation are sometimes herein referred to individually as a "party" or collectively as the "parties."

RECITALS

- 1) Pursuant to Resolution No. 06-559 adopted on November 14, 2006, the City authorized the creation of the Foundation in order to promote the quality of life, create lasting enhancements and address community needs in the City and for the residents of the City, as is more further detailed in the Foundation's Certificate of Formation and Bylaws; and
- 2) The City proposes to make various contributions to the Foundation to allow the Foundation to accomplish its public purposes; and
- 3) The Foundation is qualified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, and it operates exclusively to further charitable purposes; and
- 4) Pursuant to Resolutions No. 07-483 adopted on August 14, 2007, No. 08-144 adopted on May 6, 2008, and No. 13-___ Adopted on October 15, 2013, in furtherance of the objectives of the City as set forth in Resolution No. 07-482, the City authorized grant contributions to the Foundation; and
- 5) This Agreement shall apply to all grants from the City to the Foundation.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Grants by the City to the Foundation shall be held as a segregated, permanent endowment fund, and only interest and income earned thereon shall be distributed or allocated by the Foundation no less often than annually for purposes of payment of operating expenses, awarding of grants and/or growing the permanent endowment fund. Grants from the Foundation shall be based on the categories and fund percentages provided in **Exhibit "A"**, attached hereto and incorporated herein. Operating expenses shall be allocated proportionally among the funds based on the then current fund balance. Each fund shall be accounted for under generally accepted accounting principles for nonprofit organizations applied on a consistent basis. The Foundation shall not discriminate in any of its operations and grant-making on the basis of race, gender, national origin or color of skin.
2. The Foundation shall adopt an investment policy that will govern the management of all funds contributed by the City, and such investment policy must be entirely consistent with

the Public Funds Investment Act under the Texas Government Code, Chapter 2256 and the Uniform Prudent Management of Institutional Funds Act under the Texas Property Code, Chapter 163 as amended. The Foundation shall establish internal controls over the grant funds that are acceptable to the City. All funds received by the Foundation from the City shall be deposited into a separate account from the other funds of the Foundation.

3. The Foundation shall prepare quarterly and annual reports accounting for all funds received from the City. The quarterly report shall be due 45 days after the close of the quarter. It shall contain a narrative of the Foundation's activities and an unaudited financial statement. The annual report shall be due on the last day of the third month after the end of the Foundation's fiscal year. The annual report shall include a narrative describing each of the activities supported by grant funds, and shall include financial statements kept in accordance with generally accepted accounting principles. The City shall have the right to audit all accounting records of the Foundation related to funds contributed by the City. The Foundation shall provide any additional records related to the City upon written request by City within thirty (30) days after the Foundation receives such request. Furthermore, the Foundation shall properly, accurately and completely maintain detailed and accurate records and other supporting documentation related to its obligations under this Agreement for three years following the date of termination of this Agreement.

4. The Foundation shall maintain an internal control structure designed to provide reasonable assurance that funds received from the City are safeguarded from loss or unauthorized use, that transactions are executed in accordance with the Foundation's authority, and that financial records are reliable for the purposes of preparing financial statements.

5. During the term of this Agreement, the Foundation shall remain in good standing, preserve its legal authority and right to do business in the State of Texas, shall not dissolve or otherwise dispose of all or any material part of its assets, and shall not combine, consolidate with, or merge into another entity without the prior written consent of the City.

6. The Foundation agrees to comply with all Internal Revenue Code requirements for a Section 501(c)(3) organization when dealing with grant funds. The Foundation agrees not to spend any of the grant funds on any form of political or lobbying activity. The Foundation will not use any of the grant funds attempting to influence legislation. The Foundation agrees not to use funds in a manner inconsistent with the provisions of Internal Revenue Code Section 4945(d)(1) through (5).

7. Nothing in this Agreement shall restrict the Foundation from receiving grants, contributions or donations from individuals or from entities other than the City; provided, however, that all contributions from the City shall be maintained in accounts segregated from any other contributions or donations to the Foundation. Similarly, nothing in this Agreement shall restrict the investment or expenditure of grants, contributions or donations from such other individuals or entities.

8. The City hereby grants a license to the Foundation to use the City's logo in any manner the Foundation sees fit to promote the Foundation and/or the City.

9. **The Foundation will at all times indemnify, defend and hold the City, its elected officials, officers, employees and volunteers, harmless from and against any and all claims, damages, costs, liabilities and expenses, including reasonable attorney's fees, arising out of or in connection with any breach or alleged breach of any warranty, representation, obligation, and agreement made by the Foundation herein. The parties agree that notwithstanding anything to the contrary set forth above, neither party will be liable for indirect, special or consequential damages.**

10. The Foundation shall maintain insurance with responsible and reputable companies in such amounts and covering such risks as is prudent and is usually carried by entities engaged in operations similar to that of the Foundation, and shall furnish the City with evidence of compliance upon the City's request. The Foundation shall name the City as an additional insured under the policy.

11. Any notice necessary under this Agreement shall be in writing and shall be considered delivered three (3) days after mailing if sent certified mail, return receipt requested, or when received, if sent by prepaid courier, express mail or personal delivery, to the following addresses:

If to the Foundation:
Arlington Tomorrow Foundation, Inc.
Attn: Executive Director
P.O. Box 90231
Arlington, Texas 76004-3231

If to City:
City of Arlington
Attn: City Manager
P.O. Box 90231
Arlington, Texas 76004-3231

With a copy to:
City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

A party may change its notice address by written notice to the other party given in accordance with this section.

12. Compliance with the Law. The Foundation shall comply with all applicable laws, ordinances, codes, and regulations of local, state, and federal governments.

13. Mutual Assistance. The City and the Foundation shall do those things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

14. Authority. Each of the parties warrant and represent to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party.

15. Jurisdiction and Venue. Any disputes arising in connection with these terms will be governed by the laws of the State of Texas. Venue for any dispute arising under this Agreement shall be in Tarrant County, Texas.

16. Assignment. The Foundation may not assign or transfer this Agreement in whole or in part without the express, prior written consent of the City, which the City may grant, deny or condition in its absolute discretion.

17. Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written. This Agreement may only be amended, altered or revoked by written instrument signed by both the City and the Foundation.

18. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, and their respective successors and authorized assigns.

19. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement, which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

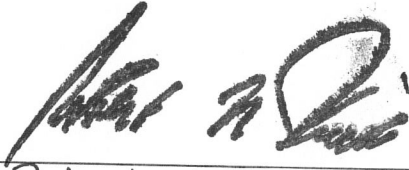
20. No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

21. No Waiver. No failure to exercise, and no delay in exercising, on the part of the City, any right under this grant agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.


22. Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Foundation and the City.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives in Arlington, Tarrant County, Texas.

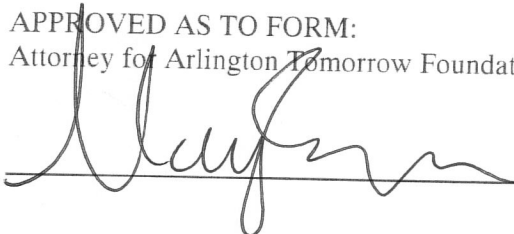
**ARLINGTON TOMORROW FOUNDATION,
INC.**

By: 
Name: Robert N. Cluck
Title: President of the Board
Date: 11-8-13

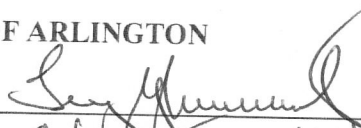
Attest:


Secretary to the Board

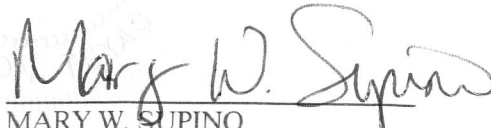
APPROVED AS TO FORM:
Attorney for Arlington Tomorrow Foundation, Inc.



CITY OF ARLINGTON

By: 
Name: Greg Kiser
Title: City Manager
Date: 11/8/13

ATTEST:


MARY W. SUPINO
City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

Exhibit "A"

Arlington Tomorrow Foundation Program

Arlington Tomorrow Foundation Program

Presented to Council October 2006
Approved by Council November 2006
Updated and Amended by Council August 2007
Amended by Council May 2008
Amended by Council October 2013

I. Overview

The Arlington City Council approved the formation of a charitable fund established with gas well revenues through the creation of a 501(c)3 non-profit foundation. The foundation, officially named Arlington Tomorrow Foundation, Inc., a Texas non-profit corporation, is separate from the City. However the Foundation and the City are closely linked, and the work of the Foundation will be consistent with the City's budget priorities and, therefore, the City Council's priorities. The Foundation's charitable fund will be an endowment, invested and managed by the Foundation, and the income generated will be used by the Foundation to keep the corpus up with inflation, cover operating expenses and/or award grants in specific areas established by the City Council through approval of a City to Foundation grant contract. This will ensure that the finite income from gas well leases on public property will continue to benefit the Arlington community long after the leases have ceased producing revenue.

II. Mission and Purpose

Arlington Tomorrow Foundation, Inc. is established to bring together a variety of resources for responsible investment and effective grant-making designed to have a positive impact on:

- quality, culture, leisure and learning opportunities
- safe and healthy neighborhoods
- municipal workforce investment
- aviation and development

Arlington Tomorrow Foundation, Inc. serves indirectly to promote the quality of life, create lasting enhancements and address community needs in the City of and for the residents of Arlington, Texas.

Arlington Tomorrow Foundation, Inc. is a vehicle for enhancing the City of Arlington's budget priorities. This very explicit purpose will be accomplished through numerous functions, including:

- investment and reinvestment of public funds into the community
- leveraging private funds for community services and capital improvements

- working closely with individual donors to connect their charitable goals with real community needs, while taking advantage of optimal tax benefits (tax deductible donations)
- providing opportunities for creative and flexible responses to unique community needs
- handling the administrative and investment related responsibilities of fund contributions
- providing financial support for vital non-profit organizations
- promoting collaborative solutions among local organizations
- empowering grassroots involvement in meeting community needs
- encouraging philanthropy in all forms
- ensuring that resources acquired today will remain relevant in the future

III. Structure

Through formal adoption by the City Council of articles of incorporation and by-laws, the Foundation has been established and has received 501(c)(3) status from the Internal Revenue Service. A super majority, $\frac{3}{4}$ vote of the City Council, is required to institute changes to the governance of the Foundation. The Foundation's activities will be overseen by a nine member Board of Directors consisting of the Mayor and eight members of City Council. The City Manager serves as an Ex-Officio board member. Details on the Board of Directors regarding how officers are chosen, resignation and removal, quorum, voting and procedures and other Board related items are addressed in the Board's Bylaws. The Foundation will be staffed by a City employee serving as the Foundation's executive director. The executive director will be responsible for overseeing the administrative work of the Foundation, investment of Foundation funds and supporting the activities of the Foundation's Board of Directors. The position will be funded entirely by the Foundation, and a job function will include bringing additional outside funding into the Foundation. The Board also has access to subject matter experts on the City staff for advice on an as needed basis and the City provides the Foundation with administrative support through a formal management agreement approved by the Foundation Board and City Council.

IV. Funding

A. Arlington Tomorrow Foundation, Inc.

The Foundation's charitable fund is established with gas well revenues received by the City. The City will continue to grant gas well revenue to the Foundation, at a rate of 90% of all bonus payments and 50% of all royalty payments received by the City on gas well leases, until such time as the Foundation's total corpus reaches \$100,000,000. The interest income earned annually may be used by the Foundation to fund grants, to grow the corpus and/or to cover operating expenses. Grants awarded by the Foundation Board shall fall in two main categories — quality culture, leisure, and learning opportunities; and neighborhood initiatives. The Foundation shall make grants from interest earnings on the endowment to support each area of the public purposes adopted

by the Council, as described in the attached list, **Exhibit A - Grant Areas**. Money generated from parks will be granted to all program areas in the quality cultural, leisure and learning opportunities category, with 50% returned directly to the park system. Revenue generated from the parks will be spent in the park system and related endeavors regardless whether it's done through the Foundation or through the City. One-time grants from park money have already been made in FY 2007 in the amount of \$1,000,000 to the River Legacy Foundation, Inc., \$100,000 for Heroes Park, and from non-parks money \$455,135 allocated for the Animal Services Center.

Additional special fund areas are also established, including: municipal workforce investment, aviation and development at the City's airport, and maintenance of City owned cemetery property. The principal for the Municipal Workforce Investment Fund will be one-time, lease bonus only money of \$500,000. The Foundation will grant the City interest earned for activities that further the development of the municipal workforce. Aviation and development initiatives will be supported by revenue generated on airport property. On an annual basis, the Foundation will grant the City interest earned for the City's expenditure on the City owned airport property in compliance with FAA regulations. City owned cemetery maintenance will be supported by revenue generated on City owned cemetery property. The Foundation will grant the City interest earned for the City's expenditure on City owned cemetery property. Proposed uses for all special fund interest (municipal workforce investment, aviation and development, and cemetery maintenance) will be appropriated as part of the annual budget in future years. See attached **Exhibit B**, for uses of all money granted from the City to the Foundation.

The original proposal presented to Council also included an Innovation and Venture Capital Fund of one-time lease bonus only money, in the amount \$2,000,000, used to support the economic development endeavors of the City of Arlington. Due to the Internal Revenue Service definition of "charitable purposes" for 501(c)3 organizations such as the Foundation, and the City's desire to use this resource for economic development activities, the Innovation and Venture Capital Fund will remain part of the City of Arlington portfolio, in a segregated revolving account, where both the interest and principal will be available for expenditure and any return on investment (such as the purchase of land for land banking then the eventual sale of the banked land) will be returned to the fund.

As mentioned before, the Foundation will be capable of, and expected to engage in, accepting other sources of funding, both public and private. Individual donations can be made to the Foundation, with the generated interest to be dispersed at the discretion of the Board or with designation by the donor for a specific area of interest already established as a Foundation objective. The Foundation can also serve in the capacity of fiscal agent for other charitable organizations, investing their endowment funds with the Foundation's funds to create a greater yield for both, but allowing the other organization to retain responsibility for how their fund's interest income is distributed.

B. City of Arlington "Gas Fund"

Gas revenue retained by the City shall be designated in three individual accounts as the "park gas lease fund" for revenue derived from park land, the "airport gas lease fund" for revenues derived from the airport, and the "general gas lease fund" for revenue derived from all other property, rather than simply being incorporated without distinction into the City's General Fund. This money, and the interest it generates, shall be appropriated annually as part of the annual budget proposal, in congruence with overall budget priorities.

V. Activities

The Foundation Board will meet at least quarterly to receive financial information, and at least semi-annually to review and award grant requests. An invitation only grant procedure is being established. The process will be implemented by allowing open submission of letters that briefly outline proposals for grant funding. Based on those letters, invitations to submit full proposals will be extended by the Board to those whose objectives match the Foundation's mission and funding priorities. This saves grant requestors the time and expense of preparing a detailed proposal, and saves the Board the time required to review lengthy proposals that do not match the Foundation's objectives. Invitation to submit a full proposal is not indicative of actually receiving a grant. Requests will be funded only to tax-exempt non-profit or government organizations for proposals that serve a clear public purpose. An equivalent value match with the amount requested is required in some areas of the charitable fund, and preferred for all. Grants can be conditional on achievement of total fund goal or other events, and can be canceled if the grantee does not satisfy the grant conditions. The Foundation Board shall determine the time or times of the year that letters and proposals will be reviewed and grants awarded. Arlington Tomorrow Foundation, Inc., having public charity status rather than private foundation status from the IRS, in addition to being recognized as a 501(c)3, must disperse money annually to fulfill its charitable purposes. However, other than zero, there is no minimum spending requirement.

Exhibit A

Grant Areas

Quality, Culture, Leisure and Learning Opportunities Fund Project Areas

Strengthening Children Youth and Families - 25 %

Priorities for grant awards

- Develop support systems for children, youth and families
- Nurture learning and growing in infants and young children
- Promote positive youth development
- Impact critical issues which negatively affect children, youth and family development
- Support recreational activities

Parks and Recreation - 50 %

Priorities for grant awards

- Facility Upgrades
- Facility maintenance (may include libraries)

Arts and Culture - 10 %

Priorities for grant awards

- Strengthen the artistic capacity of arts and cultural organizations, particularly projects that enhance earned revenue
- Improve access to the arts through community outreach and education

Libraries and Books - 10 %

Priorities for grant awards

- Books
- Reference Materials

Beautification – 5 %

Priorities for grant awards

- Build community through the implementation process and enhance the neighborhood once complete
- Projects can be on street islands (medians), sidewalks (parkways), walls and entryways visible to the public, park property, library property, and public school campuses

Neighborhoods Fund Project Areas

Safe Neighborhoods - 30%

Priorities for grant awards

- Public safety capital
- Support lighting projects that can demonstrate a link to community design and crime prevention
- Promote safety around schools
- Support traffic calming plans and implementation when it has a direct effect on public safety

Strong Neighborhoods - 25%

Priorities for grant awards

- Support restoration projects that benefit the entire neighborhood (not just the one project)
- Foster community involvement through inclusive programs
- Strengthen the organizational capacity of community-based organizations and support neighborhood revitalization efforts

Animal Services - 20%

Priorities for grant awards -

- Support the creation of programs and new animal services
- Promote responsible pet ownership through community outreach and education

Environment and Energy Conservation – 20%

Priorities for grant awards

- Improve the quality of the environment through reduced pollution and waste
- Improve the quality of the environment through energy conservation
- Promote the conservation and restoration of natural areas, habitats and green spaces, and protect wildlife and endangered species
- Provide environmental education to young people and adults

Historic Preservation - 5%

Priorities for grant awards

- Foster preservation projects by contributing part of the cost of surveys, comprehensive historic preservation plans, National Register nominations, brochures and educational materials, as well as architectural plans, historic structure reports, and engineering studies necessary to repair listed properties
- Support Restoration (“bricks and mortar”) development projects that preserve the history of the community

Exhibit B- ARLINGTON TOMORROW FOUNDATION'S FUND PURPOSES (Amended 8-14-07)

