



**AGREEMENT TO ESTABLISH THE \_\_\_\_\_ FUND  
AT THE WACO FOUNDATION**

This Agreement to establish the \_\_\_\_\_ (the “Fund”) as a donor advised component fund within the WACO FOUNDATION (the “Foundation”) is made by and between \_\_\_\_\_ (“Donor”) and the Foundation.

WHEREAS, the parties to this Agreement have a common interest in serving the charitable needs of McLennan County and other charitable organizations designated as a 501(c)(3) organization under the Internal Revenue Code; and

WHEREAS, Donor wishes any property transferred to the Foundation, by or on behalf of Donor, to become a component part of the Foundation;

NOW, THEREFORE, in consideration of the premises, and the mutual promises contained herein, Donor and the Foundation agree as follows:

1. *Establishment of Fund.* A fund shall be established on the books of the Foundation, which shall be known as the \_\_\_\_\_. Donor or any other person may make additional contributions to the Fund acceptable by the Foundation.

2. *Property of the Fund.* The Fund shall be the property of the Foundation, held by it in its Trust capacity. The Foundation shall have the ultimate authority and control over all of the property in the Fund and the income derived therefrom for the charitable purpose of the Foundation.

3. *Purposes.* The Fund shall be used only for the charitable purposes of the Foundation as set forth in its governing documents or as may be hereafter amended.

4. *Distributions of Principal and Income.* Distributions from the Fund of the income or principal shall be made at such times, in such amounts, in such ways and for such purposes as the Foundation may determine.

For purposes of this Paragraph 4, income shall be distributed in accordance with the Waco Foundation’s spending policy, which is currently 5% of the ending balance of the 28 trailing quarters, but is subject to change. This definition shall be interpreted consistently with the authorization for “expenditures” pursuant to the Uniform Management of Institutional Funds Act, Texas Property Code Sec. 163.001, et seq., as it may be amended from time to time. The determination of income shall be made by the Waco Foundation subject to the standards described in Texas Property Code Sections 163.004 and 163.007 and historic dollar value shall be as defined in Section 163.003 of the Texas Property Code. In the event the Uniform Management of Institutional Funds Act is repealed, the Waco Foundation shall either continue to apply the standard in effect on the effective

date of repeal of if there is a successor statute, apply the similar standard applicable under the successor statute.

5. *Donor Recommendations.* Donor may from time to time make recommendations with respect to distributions, which recommendations shall be solely precatory and advisory in nature, and the Foundation shall not be bound, by such recommendations.

6. *Management of Fund.* The Foundation shall manage and invest the Fund in accordance with its procedures and policies in effect, from time to time. The Fund may be either commingled with other Foundation assets, or segregated and administered as a separate account; provided, however that if the assets of the Fund are commingled with other Foundation assets, the Foundation shall maintain at all times separate records and books of account so as to identify the assets and interests of the Fund. A report of such assets and interest will be provided to Donor at least quarterly.

7. *Expenses and Fees.* The Fund shall bear its prorata share of all expenses and fees, which may be determined by the Foundation to be allocable or chargeable to the Fund. Such expenses and fees shall be charged to the income or principal of the Fund as determined by the Foundation.

8. *No Benefit to Donor.* Neither the Donor nor any other person may receive any tangible benefit or privilege in return for distribution of the Fund.

9. *No Enforceable Obligation.* It is understood that no distribution from the Fund will be used to satisfy or discharge a legally enforceable pledge or obligation of the Donor or any person or entity.

10. *Component Part of Foundation.* Donor recognizes and agrees that the Fund shall be a component fund of the Foundation and subject to the governing documents of the Foundation, and the policies and procedures of its governing body. It is intended that the Fund be a component fund of the Foundation and nothing in this Agreement shall affect the status of the Foundation as an organization described in Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Internal Revenue Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention so as to conform to any applicable requirements of the Internal Revenue Code and the regulations promulgated thereunder. The Foundation and Donor shall have the power to retroactively amend this Agreement in order to comply with the intent of the parties.

11. *Foundation Property.* Donor recognizes that the Fund is a component part of the Foundation and as such, shall be under the control of the Foundation as to its administration, investment and distribution and although Donor has the right to make recommendations, such recommendations shall be precatory and advisory, and the Foundation shall not be bound by such recommendations.

12. *Duration and Variance of Purposes.* Donor shall have the privilege of making recommendations regarding grants from the Fund for a period not to exceed twenty (20) years. At the end of twenty (20) years, any remaining assets of the Fund shall be transferred to the unrestricted fund of the Foundation unless the privilege of making grant recommendations has been extended for an additional term at the request of Donor and approved by the Foundation.

13. *Limited Power to Amend.* The Foundation is authorized to amend this Agreement to conform with the provisions of any applicable law or government regulation in order to carry

out the purposes of the Fund and to continue its exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

EXECUTED in duplicate originals this \_\_\_ day of \_\_\_\_\_, 2011.

**DONOR**

**WACO FOUNDATION**

\_\_\_\_\_

\_\_\_\_\_  
**ASHLEY ALLISON**  
**Executive Director**