



FUND AGREEMENT  
for the

<Fund Name>

(an Advised Legacy Endowment fund)

THIS AGREEMENT is made and entered into on <Today's Date>, by and between THE SAN DIEGO FOUNDATION ("TSDF") and <Founder Name> ("Founder").

1. NAME OF THE FUND

Founder intends to transfer certain assets, irrevocably, upon <his or her> death to TSDF to establish in TSDF the <Fund Name> (the "Fund"). TSDF may receive additional irrevocable gifts of property acceptable to TSDF from time to time from Founder and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of paragraph 4 below, the primary purpose of the Fund shall be to support <Fund Purpose>.

(Option) It is the wish of Founder that <0% to 100% > of distributions from the fund be made available for unrestricted grantmaking by the Board of Governors of The San Diego Foundation.

3. INVESTMENT OF FUNDS

TSDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code.

4. DISTRIBUTEES

Subject to paragraph 6, earnings allocated by TSDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1)

or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California. Distributions from the Fund shall be within the purposes and procedures of TSDF as contained in its Articles of Incorporation and its Bylaws.

5. RECOMMENDATIONS FOR DISTRIBUTION

- a. Upon receipt of assets, <Advisor Name> shall be the advisor of the Fund (the “Fund Advisor”). Upon the death, incapacity or resignation of the Fund Advisor, the Board of Governors of TSDF itself shall serve as the advisor of the Fund.
- b. Distributions from the Fund may be made from income and so much of the net appreciation (realized and unrealized) in the fair value of the assets of the Fund over the historic dollar value (as defined herein) of the Fund as is prudent under the standard established by Section 18506 of the California Probate Code. Distributions shall be made to permissible distributees and at such times and in such amounts as may be determined by the Board of Governors of TSDF. There shall be no requirement that income be distributed each year; income may be accumulated and added to principal. Income which is accumulated and added to the principal may, however, be distributed in the future as herein provided. Distributions shall be made to such distributees of the type described in paragraph 4 as may be designated by the Board of Governors of TSDF. If any gifts to the Fund are received and accepted subject to a founder’s restriction on the use of income, such restrictions will be honored, subject however to the powers of modification set forth in Section 7 hereof. As used herein, “historic dollar value” means the aggregate fair value in dollars of (a) the Fund at the time it became an endowment fund, (b) each subsequent donation to the principal of the Fund at the time it is made, and (c) any accumulation made pursuant to any direction herein at the time the accumulation is added to the Fund. California Probate Code Section 18501(d.)

6. CONTINUITY OF THE FUND

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for either of the above reasons, TSDF shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of TSDF’s Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, the original purpose of the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of TSDF. All money and property in the Fund shall be assets of TSDF, and not a separate trust, and shall be subject only to the control of TSDF. Pursuant to Treasury Regulations, the Board of Governors of The San Diego Foundation has the power “to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.” Treas. Reg. §1.170A-9(e)(11)(v)(B) and (E).

