



**FUND AGREEMENT  
for the**

The City of Del Mar Wayside Horn Fund  
*(an Advised Non-Endowment fund)*

THIS AGREEMENT is made and entered into on November 18, 2010, by and between THE SAN DIEGO FOUNDATION (“TSDF”) and Lee Stein, Hershell Price, Bryce Rhodes and Larry Richards (“Founders”).

1. NAME OF THE FUND

Founders transfer assets irrevocably to TSDF to establish in TSDF the The City of Del Mar Wayside Horn Fund (the “Fund”). TSDF may receive additional irrevocable gifts of property acceptable to TSDF from time to time from Founders 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 install a wayside horn at the 15<sup>th</sup> Street train crossing in Del Mar. This will greatly reduce the noise nuisance of the train in the Del Mar Community, and will improve the quality of life for Del Mar residents. If for any reason, the horn cannot be installed, funds will be directed at the Founders’ recommendation to another nonprofit project in the City of Del Mar.

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, principal and/or 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. The Founders shall be the advisors of the Fund (the “Fund Advisors”). Upon the death or incapacity of one of the Founders, the remaining Founder shall be the Fund Advisor. Upon the death or incapacity of the last surviving Founder, this fund shall be converted to an endowment, to be held in perpetuity; with the Board of Governors of TSDF itself serving as the advisor of the Fund.
- b. Distributions from the Fund may be made from income and/or principal and shall be made at such times and in such amounts as may be determined by the Board of Governors. There shall be no requirement that income be distributed each year; income may be accumulated and added to principal. Consistent with the foregoing, distributions shall be made to such distributees of the type described in paragraph 4 as may be designated by TSDF; provided, however, that the Fund Advisors may from time to time submit to TSDF the names of distributees to which it is recommended that distributions be made, which distributees shall not be other than those described in paragraph 4. All recommendations from the Fund Advisors shall be solely advisory, and TSDF may accept or reject them, applying reasonable standards and guidelines with regard thereto.

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(f)(11)(v)(B) and (E).

8. COSTS OF THE FUND

It is understood and agreed that the Fund shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by TSDF as the fee structure applicable to Funds of this type. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for the Fund shall also be paid from the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to TSDF.

10. CHARITABLE DEDUCTIONS

It is intended by Founders and by TSDF that federal gift, income and estate tax charitable deductions shall be allowed to Founders and to Founders' estate and that TSDF shall continue to qualify as an organization described in Sections 170(b)(1)(A)(vi), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986.

This entire Agreement shall be construed and applied so as to comply with the requirements of federal tax law for allowance of such charitable deductions and for such qualifications.

IN WITNESS WHEREOF, we execute this agreement on \_\_\_\_\_.

Founders: \_\_\_\_\_  
Lee Stein  
\_\_\_\_\_  
Hershell Price  
\_\_\_\_\_  
Bryce Rhodes  
\_\_\_\_\_  
Larry Richards

Approved by the Board of Governors of The San Diego Foundation on \_\_\_\_\_.

By: \_\_\_\_\_  
Gerald Hoffmeister  
Chair, Board of Governors



Non-Endowment Investment Recommendations

The City of Del Mar Wayside Horn Fund

Fund Balance of \$49,999.99 or less:

All funds with a balance of \$ 49,999.00 or less will be assigned to Pool A (short term fixed income).

Fund Balance of \$50,000.00 or more:

All funds with a balance of \$ 50,000.00 or more may select from Pools A, B or C.

As advisor/founder to this fund I recommend the funds be invested in the following pool:

- Pool A - Short Term Fixed Income
- Pool B - 30% Equity
- Pool C - 60% Equity - ( a 90-day advance notice for grants of \$10,000.00 or more)

Each of the investment pools above includes a money market component to allow for the liquidity needs of those funds participating in the pool.

**Grants may be made from the funds throughout the life of the fund regardless of which investment pool is recommended.**

For purposes of making founder-recommended grant distributions, The Foundation requires advance notification of 7 - 14 days.

I understand that assets in Investment Pools A, B & C will experience both capital gains and capital losses according to market conditions.

Founders:

\_\_\_\_\_  
Lee Stein Date

\_\_\_\_\_  
Hershell Price Date

\_\_\_\_\_  
Bryce Rhodes Date

\_\_\_\_\_  
Larry Richards Date