

City of Waltham

Jeannette A. McCarthy
Mayor

CITY OF WALTHAM
CITY CLERK'S OFFICE
2018 FEB -8 A 10:22
RECORDED

February 8, 2018

TO: The City Council

RE: Waltham Fallen Soldiers of the Vietnam Conflict Scholarship

Dear Councillors:

I respectfully request acceptance of the enclosed scholarship.

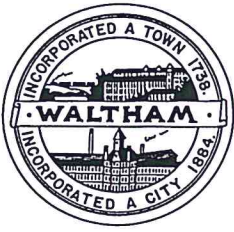
Sincerely,

Jeannette A. McCarthy

JAM/ccb

Enclosure

cc: Thomas J. Magno



City of Waltham
Treasurer/Collector
610 Main Street
Waltham MA 02452

January 24, 2018

Mayor Jeannette McCarthy
City of Waltham
610 Main Street
Waltham, MA 02452

Re: Waltham Fallen Soldiers of the Vietnam Conflict Scholarship

Dear Mayor McCarthy:

Attached please find four (4) copies of the trust agreement for the Waltham Fallen Soldiers of the Vietnam Conflict Scholarship which has been reviewed by the Law Department. Please sign three copies and return them to my office.

Please forward the final copy to the City Council for approval.

Respectfully,

Thomas J. Magno
Treasurer/Collector

TJM/sll

RECEIVED
JAN 26 2018
MAYOR'S OFFICE

**WALTHAM'S FALLEN SOLDIERS OF THE VIETNAM CONFLICT
REMEMBRANCE SCHOLARSHIP TRUST**

In honor of:

**Lawrence R. Duffy, Paul C. King Jr., Michael B. Murphy, John M. Sullivan,
Paul A. Dupere, David P. Ingersoll, Thomas E. O'Neill Jr., Emil Tadevich,
Reginald J. Gautreau, Thomas F. Jackson, Kenneth Moores, and Joseph P Rando.**

THIS AGREEMENT made as of the _____ day of _____, 2018
by and between the **CHARLES MANTENUTO** (hereinafter referred to as the "Donor")
and the **CITY OF WALTHAM**, a municipal corporation, acting by and through its
Treasurer (hereinafter referred to as the "Trustee").

WITNESSETH

WHEREAS, the Donor intends to hereby create and establish a charitable trust
that shall exist in perpetuity and be operated for the exclusive purposes hereinafter set
forth; and

WHEREAS, the Donor intends to provide an initial contribution of One Hundred
and Twenty Thousand and 00/100 (120,000.00) Dollars and that such funds and the
charitable trust created this day shall exist and be operated for the exclusive purposes
hereinafter set forth in perpetuity; and

WHEREAS, the Donor intends to provide hereby that said initial donation, all
future donations to principal, and all income of such charitable trust shall always be
received, held, and administered for the exclusive purposes hereinafter set forth.

NOW THEREFORE, for the purpose of carrying out and giving effect to the
above-stated intentions of the Donor, and also for the purpose of prescribing the terms
and conditions upon which all donations to and all income of the charitable trust are to be
held and administered and distributed for the exclusive purposes for which the charitable
trust is created and for which the charitable trust is to be operated, and also for such other
purposes as may be required by law, the Donor and the Trustee do hereby covenant and
agree as follows:

1. **Creation of Trust:** The Donor hereby creates and establishes a charitable trust
(hereinafter referred to as the "Trust") for the exclusive purposes hereinafter set forth
and the City of Waltham acting by and through its Treasurer as Trustee hereby
accepts the Trust and agrees to act as Trustee of and under the Trust in accordance
with the terms and conditions hereinafter set forth.
2. **Name of the Trust:** The Trust hereby created and established shall be known and
designated as the **WALTHAM'S FALLEN SOLDIERS OF THE VIETNAM
CONFLICT REMEMBRANCE SCHOLARSHIP TRUST**.

3. **Purpose of Trust and Trust Funds:** This Trust is created for the following charitable purposes only: to encourage and assist senior of Waltham High School intending to attend college, and to encourage and assist them in pursuit of a post-secondary education (either a two or four year program). Such assistance is to be acknowledged as being in behalf of the memory of Lawrence R. Duffy, Paul C. King Jr., Michael B. Murphy, John M. Sullivan, Paul A. Dupere, David P. Ingersoll, Thomas E. O'Neil Jr., Emil Tadevich, Reginald J. Gautreau, Thomas F. Jackson, Kenneth Moores, and Joseph P. Rando.

No part of the activities of the Trust shall consist of carrying on propaganda, advancing any political or religious agenda, or otherwise attempting to influence legislation or politics, and no part of the net earnings or corpus of the Trust shall inure for the benefit of any private individual, person or corporation, except pursuant to the charitable purposes articulated in this Trust.

It is the expressed intention of the Donor that the initial donation in the sum of One Hundred and Twenty Thousand and 00/100 (\$120,000.00) Dollars be made and that all future donations to principal and all income of such Trust shall always be received, held and administered for these exclusive purposes.

It is the expressed intention of the Donor that Eighteen Thousand and 00/100 (\$18,000.00) Dollars of the initial donation be considered the principal corpus and that said amount shall remain same in perpetuity whereas One Hundred and Two and 00/100 (\$102,000.00) Dollars of the initial donation, together with any future net earnings of the Trust Fund, may be used to meet the scholarship awards each year in accordance with the terms and conditions of the Trust as set forth herein.

It is the expressed intention of the Donor that at all times the Trust funds shall be tax exempt, and that at all times all donations to the Trust shall be deductible from taxable income of the donating party to the extent allowed by laws.

4. **Duration.** This Trust shall be irrevocable and perpetual, to the extent there are funds available to dispense, and provided that if the charitable purposes for which it has been created shall, by reason of circumstances at any time existing, cease to be practical in the discretion of the Trustee, then the Trustee shall transfer the assets remaining in their hands to the general scholarship trust account managed by the Waltham School Department for the benefit of eligible graduating Waltham High School senior girls in pursuit of a post-secondary education. The signature of the Treasurer of the City of Waltham acknowledging receipt of the funds shall be adequate evidence of delivery. The Donor shall not have the right at any time to revoke this Agreement or the trust fund.
5. **Donations to the Trust:** The initial donation to the Trust shall be made by the Donor by paying or transferring or otherwise delivering said monies (totaling \$120,000.00) to the Trustee. Additional donations to the Trust may also be made by any person or party other than the Donor, but expressly subject to the condition that the Trustee may

refuse to accept as a donation from any such other person or party any item of property of a type which the Trustee, in its sole and uncontrolled discretion, deems inadvisable or improper to accept.

Any donation to the Trust may be in the form of cash, or in the form of any type of check or any type of other instrument for the payment of money. Each donation to the Trust shall be made by paying or transferring or otherwise delivering to the Trustee such donation.

6. **Trust Fund:** The Trustee shall receive each donation paid or transferred or otherwise delivered to the Trustee by the Donor and by any person or party other than the Donor, subject only to the condition expressed in Paragraph 5 above. All such donations so received by the Trustee, together with all income therefrom and thereon, are hereinafter referred to as the "Trust Fund". The Trustee shall receive, hold, manage and administer the Trust Fund for the exclusive purposes hereinafter set forth and in accordance with the terms and conditions hereinafter prescribed.
7. **Administration of Trust and Powers of Trustee:** The Trustee shall have the following powers and authorities in the administration of the Trust Fund, to wit:
 - a. To accumulate and reinvest the income and profits of the Trust. In the event of a cessation of Trust activities as described in Paragraph 16, it is intended that both the income and principal shall be used for the charitable purposes set forth herein.
 - b. To allocate the amount of income (and principal in event of cessation of Trust as described in Paragraph 16) to be paid out in any given year for the charitable purposes defined herein and in accordance with the terms of the Trust stated herein;
 - c. To determine the method of payment;
 - d. To solicit and accept donations and gifts in the form of cash, checks or its equivalent, to increase the assets of the Trust, or to reject same in his sole discretion. The Trustee shall have full and unrestricted discretionary power and authority to hold, manage, invest, reinvest, sell, assign, transfer, deliver and dispose of all property of the Trust without application to or order of any court and without any duty upon any person dealing with him to see to the application of any money or other property delivered to him. In making investments, the Trustee shall not be limited to such investments as trustees are by law authorized to make but may make whatever investments which seem to him prudent and reasonable, including mutual fund investments, and the Trustee may engage and rely upon the advice of reputable investment advisors.

- e. As to any donation of property which the Trustee rejects, the Trustee shall notify a member of the Scholarship Committee who will then address the nature, extent and appropriateness of the donation, and who shall convert the donation to funds acceptable to the Trustee for deposit into the Trust corpus.
 - f. To make and execute and deliver, as Trustee, any and all instruments in writing necessary or proper for the accomplishment of any of the foregoing powers.
8. **Compensation of Trustee:** The Trustee shall not be paid compensation, but shall be entitled to all reasonable and necessary expenses of administration including counsel fees which shall be paid to and withdrawn by the Trustee from and out of the Trust Fund.
9. **Payment of Taxes.** The Trustee shall charge against and withdraw and pay from the Trust Fund all taxes of any and all kinds levied or assessed under existing or future laws of the United States of America or any State upon or in respect to the Trust Fund.
10. **Accounting of Trustee.** Upon written request by the Committee or the Donor, the Trustee shall render accounts of its transactions to the Committee or the Donor, but the Trustee shall not be required to account more than once per year. The Trustee may initiate at any time any action or proceedings for the settlement of its accounts, or for the determination of any question of construction which may arise, or for instructions. In such event, the only necessary party defendant to any such action or proceedings shall be the Scholarship Selection Committee, except that the Trustee, if it so elects, may also bring in any other person or party as defendant in his sole discretion.
11. **Liability of Trustee:**
- (a) The Trustee shall not be liable hereunder for any matter or thing, except for its own willful misconduct.
 - (b) No Trustee shall be responsible or liable for any loss to the Trust Fund which may occur by reason of depreciation in value of the properties at any time belonging to the Trust Fund, nor for any other loss to the Trust Fund which may occur, except that each Trustee shall be liable for its own willful misconduct.
 - (c) No Trustee shall be liable or responsible for the acts, omissions, or defaults of any agent or other person to whom duties may be properly delegated hereunder. No Trustee shall be liable or responsible for any act within the sole power and discretion of any other Trustee.

(d) No Trustee acting in its fiduciary capacity hereunder shall incur any personal liability for obligations of the Trust to any third party who deals with the Trustee in the administration of the Trust and/or Trust Fund. Each Trustee shall be entitled to reimbursement from the Trust Fund for any liability, whether in contract or in tort, incurred in the administration of the Trust and/or Trust Fund in accordance with the provisions hereof. Each Trustee may contract in such form as to exempt the Trustee from such personal liability and to cause such liability to be limited to the Trust Fund. No successor Trustee shall have any duty, responsibility, obligation or liability whatsoever for, or any duty, responsibility, obligation, or liability whatsoever for failure to rectify, the acts or omissions of any predecessor Trustee.

12. **Additional and Successor Trustees:** The individual holding the office of Treasurer for the City of Waltham shall, ex officio, act as Trustee. If a vacancy exists in the office of Treasurer for the City of Waltham, the functions of Trustee shall be performed by the Auditor for the City of Waltham, until such time as a Treasurer is lawfully appointed.

13. **The Scholarship Selection Committee:** It is the intent of the Donor to provide herein for a self-perpetuating Scholarship Selection Committee ("the Committee") which shall consist of a minimum of three and a maximum of five individuals.

The original members of the Committee shall be:

- Charles Mantenuto, 45 Leslie Road , Waltham, MA 02451 (member of Donor);
- Robyn Williams, 817 Summer Street , Lynn, MA 01905 (member of Donor);
- Judith O'Neil, 24 Cedarwood Ave , Waltham, MA 02453 (member of Donor).

At any time a majority of the then members of the Committee shall have the right (1) to appoint a new member to fill any vacancy in the Committee; and (2) to discharge any member of the Committee. Regardless of the existence of any vacancy, the Committee may act so long as there shall be in office at least two members.

If at any time and for any reason or no reason the Committee consists of less than two members for a period of thirty days, the Principal of Waltham High School ("WHS"), or his/her designee, shall appoint a new member or members to fill the vacancy or vacancies so that the Committee shall consist of a minimum of three and a maximum of five individuals. Any appointment made by the Principal, or his/her designee, shall include any of the following individuals: the Director of any of the following named departments (Math, Science, English, or History) at WHS or his/her designee; a history teacher at WHS or his/her designee; and any Guidance Counsellor at WHS.

The Committee may use the name of Waltham's Fallen Soldiers of the Vietnam Conflict Remembrance Scholarship Committee. If any written instrument is required to be signed or if any action is required to be taken by the Committee, such written instrument may be signed and such action may be taken on behalf of the Committee by any person or persons authorized by all members of the Committee to sign such written instrument or to take such action on its behalf. Any such authorized person need not be a member of the Committee.

No bond or other security shall be required of any member of the Committee. No fee or other compensation shall be paid to any members of the Committee for his or her services as such member.

The Committee shall award scholarships in accordance with Paragraph 14 below.

14. Scholarship Recipients, Award Amounts, and Disbursement:

A. Determination of Scholarships. The Committee may award between one and three scholarships per year as it deems proper, provided however, that:

1. Each scholarship awarded shall be for four thousand and 00/100 (\$4,000.00) Dollars and awarded in memory of the following fallen soldiers:
 - i. Scholarship 1 shall be awarded in memory of Lawrence R. Duffy, Paul C. King Jr., Michael B. Murphy, and John M. Sullivan.
 - ii. Scholarship 2 shall be awarded in memory of Paul A. Dupere, David P. Ingersoll, Thomas E. O'Neil Jr., and Emil Tadevich.
 - iii. Scholarship 3 shall be awarded in memory of Reginald J. Gautreau, Thomas F. Jackson, Kenneth Moores, and Joseph P. Rando.
2. The Committee shall only award as many scholarships as can be funded that year (although no more than three as detailed above) without reducing the value of the Trust Fund to less than the Minimum Principal Balance (\$18,000.00).
 - i. In order to be certain that the Committee does not promise money that will not be available in the Trust, each year before the Committee grants any scholarships, the Committee will consult with the Trustee to determine the maximum amount that can safely be offered in scholarships without risking that the Trust would be overdrawn when the scholarships are paid out.

- B. Scholarship Criteria. The Committee will request letters of interest from students and recommendations for student recipients from the Waltham High School staff. The Committee shall make the final determination as to the person or persons, if any, to receive such scholarship using the following criteria:
1. To qualify, recipients must be residents of Waltham, graduating seniors (male or female) intending to attend college/university, and in good academic standing with Waltham High School; and
 2. Applicants shall submit an essay on "The Importance of Service to One's Country" or "The Sacrifices Made By Soldiers and Their Families during the Vietnam Conflict" and the Committee shall consider said essays when deciding the scholarship recipients each year;
 3. The Committee shall also give preference to applicants with relatives of Waltham Servicemen or women killed in action in Vietnam;
 4. The Committee may give preference to applicants who are planning a career in education or helping the special needs population.
- C. Notice to Guidance Department and City Treasurer. Upon determining the number of scholarship recipients, if any, the Committee shall simultaneously notify the Waltham High School Guidance Department and the City of Waltham Treasurer of its recommendation in a timely manner so that the recipient can be recognized by the School Department in an appropriate manner and the funds can be released in coordination with the policies and procedures of the City Treasurer and the terms of this Trust.
- D. Disbursement of Scholarship. The scholarship will be awarded toward tuition at the scholarship recipient's college/university, and/or towards curriculum books, after the City Treasurer has received a copy of the recipient's first semester grades/transcript of first semester grades. Grades must be passing and complete to receive the payment of the scholarship. Upon the request of the recipient communicated in writing to the City Treasurer, the City Treasurer may pay the scholarship funds awarded directly to the recipient to be used for purchasing curriculum books for the recipient's college courses.
15. **Amendments to Trust:** This Trust Agreement may be amended by the Donor, by the Committee, or by the Trustee, provided that said Amendment is accepted by the City of Waltham in the same manner as the herein charitable trust. However, no such amendment shall permit any part of the Trust created today (Waltham's Fallen Soldiers of the Vietnam Conflict Remembrance Scholarship Trust) to be held or administered or distributed for any purposes other than the exclusive purposes set forth in Paragraph 3 herein, and no such amendment shall reduce the initial donated funds, alter the scholarship criteria, or effect or result in a revocation or termination of this Trust Agreement or of this Trust or of the Trust Fund created by this declaration.

An amendment shall be by a written instrument signed by the Donor, by the Committee, or by the Trustee, and delivered to the Treasurer of the City of Waltham for the City's approval. The signature of the Trustee/City Treasurer shall be required in the event the proposed amendment increases the Trustee's duties, obligations, or liability or changes its entitlement to administrative costs as currently enumerated in Paragraphs 7 and 8 above. The Trustee has the right to refuse to act as Trustee of any Trust amended in this regard.

16. **Cessation of Activities:** If at any time the Trustee is of the opinion that the Trust assets have been sufficiently reduced to make the continued operation of the Trust uneconomic, the Trustee, or on notice to the Committee, (which Committee may be specially appointed by the Trustee if no Committee exists at the time), may transfer the entire balance of funds under its control to the general scholarship trust account managed by the Treasurer for the City of Waltham for the benefit of graduating Waltham High School senior girls in pursuit of a post-secondary education. The signature of the Treasurer of the City of Waltham acknowledging receipt of the funds shall be adequate evidence of delivery. Any amount disbursed from the general scholarship trust account shall acknowledge the name of one of the following: Lawrence R. Duffy, Paul C. King Jr., Michael B. Murphy, John M. Sullivan, Paul A. Dupere, David P. Ingersoll, Thomas E. O'Neil Jr., Emil Tadevich, Reginald J. Gautreau, Thomas F. Jackson, Kenneth Moores, and Joseph P. Rando.
17. **Governing Law:** This Agreement and the Trust and the Trust Fund shall be construed and regulated and administered under the laws of the Commonwealth of Massachusetts. All donations to the Trust shall be deemed to take place in the Commonwealth of Massachusetts. The Trustee shall be liable to account only in the courts of the Commonwealth of Massachusetts.
18. **Counterparts:** This Agreement shall be executed in three counterparts, each one of which shall be deemed to be the original regardless whether or not the others are reproduced.
19. **Authority to Bind:** Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Party for which he or she is signing, and to bind that Party to the terms of this Agreement.

IN WITNESS WHEREOF the Donor has affixed its presents to be executed by its duly authorized representative on or as of the day and year first above written, and the Trustee has caused these presents to be executed by its duly authorized officer or officers and its corporate seal to be hereunto affixed on or as of the day and year first above written.

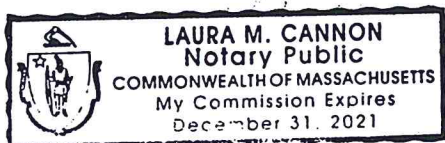
DONOR:



Charles Mantenuto

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 27 day of December, 2017, before me, the undersigned notary public, personally appeared Charles Mantenuto, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.




Notary Public: Laura M Cannon
My commission expires: 12/31/2021

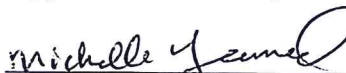
Acceptance by the City of Waltham

In witness whereof the City of Waltham, acting by and through its Mayor, with approval and authorization of the City Council as evidenced by the attached Council Order, has caused this trust fund to be received for the benefit of the City and the inhabitants thereof this _____ day of _____ 2018.

City of Waltham, by its Mayor, pursuant to Council Order No. _____

By: _____
Jeannette A. McCarthy, Mayor

Approved as to form, not substance:

 1-17-2018
Law Department Date: