

ATTACHMENT B

**CK Foundation Grant Agreement**

## GRANT AGREEMENT

This grant agreement (this "Agreement") is made effective on March 1, 2016, (the "Effective Date") between **Ball State University Foundation**, an Indiana nonprofit corporation (the "Foundation"), **Ball State University** (the "University"), an instrumentality of the state of Indiana, and the **Charles Koch Foundation**, a Kansas nonprofit corporation (the "Donor"), for the benefit of the John H. Schnatter Institute for Entrepreneurship and Free Enterprise (the "Institute"), which will be imminently created at the University. The term of this Agreement shall begin on the Effective Date and shall continue for eight years (the "Term"), unless earlier terminated pursuant to the terms and conditions of this Agreement. The Foundation, the University, and the Donor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. **Promoting Academic Freedom.** Consistent with the Donor's principles of supporting a diversity of ideas in higher education, the Donor's grant is intended to help promote a republic of science at the University, where ideas can be exchanged freely and useful knowledge will benefit the well-being of individuals and society. Thus, the Parties agree that the academic freedom of the University, the Institute, and their faculty, students, and staff is critical to the success of the Institute's research, scholarship, teaching, and service.

2. **The Institute.** The University desires to support the Institute to advance the Institute's and University's educational missions as follows:

a. **The Institute's Mission and Director.** As stated in the Ball State University Proposal, which is hereby incorporated into and made part of this Agreement, and attached as Attachment A (the "Proposal"), the University has informed the Donor, and the Donor is relying on such representation, that the Institute's mission is to become a national model for values- and ethics-based entrepreneurship, developing research and talent to help solve contemporary problems and promote understanding of the characteristics and virtues of free enterprise in helping people improve their lives (the "Institute's Mission"). Dr. Michael Goldsby, who was selected by the University, shall be the initial director of the Institute (the "Institute Director"). The Parties believe the Institute Director is a critical part of advancing the Institute's Mission; therefore, the University will at all times during the Term of this Agreement seek to employ an Institute Director who is qualified to advance such mission, subject to the University's established policies and procedures for hiring faculty and staff. If the individual holding the Institute Director position changes, the University shall promptly notify the Donor.

b. **The Institute Programs.** To support the Institute's Mission, the University desires to create the following positions and activities to affiliate with the Institute, collectively referred to as the "Institute Programs." The Institute Programs are described more fully in the Proposal and include a "New Tenure-Track Entrepreneurship Professorship," a "Tenure-Track Entrepreneurship Professorship," two "Tenure-Track Economics Professorships," the "Operations Manager," the "Entrepreneurial Learning Academy," the "Entrepreneurial Leadership Academy," the two "Graduate Assistants," "Undergraduate Programs," "Entrepreneurship Center Support," "Research," and "Research and Education Support." The Foundation and the University shall each use any funds received under this Agreement to support the Institute Programs in accordance with the terms of this Agreement. The selection of the foregoing positions will follow the University's standards and procedures for hiring faculty and staff.

3. **The University's Commitment to and Support for the Institute.**

a. **Generally.** The University shall in good faith support the Institute Programs to advance the University's mission during the Term of this Agreement. Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the Institute receiving all approvals required for its creation, including those approvals set forth in the *Faculty and Professional Personnel Handbook* and the *Ball State University Board of Trustees Policy on Naming of University Facilities and Programs*.

b. Institute Program Support. The University has selected Dr. Michael Goldsby as the initial Institute Director. The University shall hire individuals for the four professorships described in this Agreement to begin providing services to the University by August 14, 2017. The University shall allocate funding for the salary and benefits of the Institute Director and the four professorships during the Term (the "Institute Program Support"). To the extent that the Institute Director position and each of the four professorship positions are filled at the time the Institute Program Support is to be provided, the University shall allocate the Institute Program Support according to the following schedule:

<b>Institute Program Support Provided</b>	<b>Contributed Amount</b>
July 1, 2016	At least \$ 500,000
July 1, 2017	At least \$ 500,000
July 1, 2018	At least \$ 500,000
July 1, 2019	At least \$ 500,000
July 1, 2020	At least \$ 500,000
<b>Total University Commitment for the Institute Program Support through May 31, 2021</b>	<b>\$2,500,000</b>

From July 1, 2021, through the end of the Term, the University shall allocate approximately \$600,000 annually in funding for the salary and benefits of the Institute Director and the four professorships described in this Agreement. For avoidance of doubt, the Institute Program Support provided under this Agreement also satisfies the University's obligation to provide the Institute Program Support under the "Schnatter Foundation Grant Agreement" (defined below).

c. Institute Office Space. The University supports the Institute's Mission and the need for appropriate office space to conduct the Institute Programs. Therefore, during the Term, the University shall provide the Institute with adequate office space as determined by the University in accordance with University policies and procedures (the "Institute Office Space").

d. University Institute Support. The "University Institute Support" includes the Institute Program Support and the Institute Office Space. This Agreement is expressly contingent upon the University providing the University Institute Support consistent with the vision of the Proposal. If the University does not provide appropriate University Institute Support, the Donor has the right in its sole and absolute discretion to terminate this Agreement.

#### 4. The Donor's Support for the Institute Programs.

a. Contributed Amount. Subject to the terms of this Agreement, the Donor agrees to contribute funds to the Foundation solely to support the Institute Programs to advance the Institute's Mission (all or part of such funds are referred to as the "Contributed Amount(s)") consistent with the vision of the Proposal. In no event shall the aggregate Contributed Amount under this Agreement exceed \$1,085,000 as follows:

<b>Institute Programs</b>	<b>Amount</b>
Salary and fringe benefits for the New Tenure-Track Entrepreneurship Professorship	Up to \$ 267,000
Salary and fringe benefits for the Tenure-Track Entrepreneurship Professorship	Up to \$ 117,000
Salary and fringe benefits for the two Tenure-Track Economics Professorships	Up to \$ 250,000
Salary and fringe benefits for the Operations Manager	Up to \$ 125,000
Costs and expenses for outreach and engagement activities inclusive of the Entrepreneurial Learning Academy, the Entrepreneurial Leadership Academy, the two Graduate Assistants, the Undergraduate Programs, the Entrepreneurship Center	Up to \$ 326,000

Support, Research, and the Research and Education Support for the Institute	
---	--

**Total Maximum Aggregate Contributed Amount: \$1,085,000**

b. Other Support. If the University and Donor mutually agree, the Donor may also contribute in-kind services to the University to help promote the work of the University, the Institute, or the University faculty, students, and staff.

c. Donor Institute Support. This Agreement is expressly contingent upon the Donor providing the Contributed Amounts listed in 4(a). If, for a reason other than the positions under the Institute Programs being unfilled or the Institute Programs otherwise not occurring, the Donor does not provide a significant portion of a Contributed Amount in response to a "Foundation Grant Report" (defined below), the University has the right in its sole and absolute discretion to terminate this Agreement.

**5. Foundation Grant Report; Proposed Grant Award Process and Schedule.**

a. The Foundation Grant Report. The Foundation shall submit an annual written report according to the schedule below to the Donor for the Donor's consideration (the "Foundation Grant Report") and an accounting of the expenditure of any Contributed Amount previously received. The Donor shall review the Foundation Grant Report in good faith. If the Donor approves the Foundation Grant Report, the Donor shall make a contribution up to the amount listed in the below schedule to the Foundation, and the Foundation agrees to accept such Contributed Amount on behalf of the University as stated in the below schedule. If the Donor does not provide any Contributed Amount in response to the Foundation Grant Report, it shall notify the Foundation and the University as stated in Section 8(a).

b. Foundation Grant Report and Proposed Grant Award Schedule

<b>Foundation Grant Report Date</b>	<b>Donor Response and Proposed Contribution Date</b>	<b>Contributed Amount</b>
Submitted as the Proposal	Within sixty (60) days of the execution of this Agreement	Up to \$217,000
July 1, 2016	On or about August 1, 2016	Up to \$217,000
July 1, 2017	On or about August 1, 2017	Up to \$217,000
July 1, 2018	On or about August 1, 2018	Up to \$217,000
July 1, 2019	On or about August 1, 2019	Up to \$217,000

c. The Fund. The Foundation shall place all of the Contributed Amount in a segregated and restricted fund on its books and records called the "EFE-CKF Fund" (the "Fund"). The Fund shall be used solely to support the Institute Programs as stated in this Agreement.

d. Contingent Grant. The Donor's support under this Agreement is expressly contingent upon the University, the Foundation, and the John H. Schnatter Family Foundation (the "Schnatter Foundation") executing an agreement providing for a grant from the Schnatter Foundation (the "Schnatter Foundation Grant Agreement") to support the Institute Programs. Therefore, the Donor shall not provide any of the Contributed Amount or be obligated to fulfill any other obligation until the Schnatter Foundation Grant Agreement, attached to this Agreement as Attachment B, is executed. The Donor's pledge to make contributions pursuant to this Agreement and the Schnatter Foundation's pledge to make contributions pursuant to the Schnatter Foundation Grant Agreement are each contingent upon each other. Therefore, any breach of this Agreement, if caused by the Foundation or the University, constitutes a separate and independent breach on the part of the Foundation or the University, as applicable, under the Schnatter Foundation Grant Agreement and shall entitle the Schnatter

Foundation to exercise any and all of its remedies provided in the Schnatter Foundation Grant Agreement, up to and including the right to terminate the Schnatter Foundation Grant Agreement.

**6. Contributed Amount Used Solely for Educational Purposes for the Institute Programs.**

a. Tax Status. According to IRS records, the Foundation is an organization described within the meaning of Internal Revenue Code (the "Code") sections 501(c)(3) and 509(a)(1). The University has furnished the Donor with records showing that it is an organization described in Code section 170(c)(1) or 511(a)(2)(B). The Foundation and the University agree to immediately notify the Donor if their respective tax statuses change.

b. Educational Purpose. The Contributed Amount will be expended solely for the Institute Programs, which is an educational purpose described in section 170(c)(2)(B) of the Code. The Contributed Amount will not be used to influence legislation as described in section 170(c)(2)(B), to influence the outcome of any election, for a political campaign or intervention, to carry on any voter registration drive, or any other purpose that would jeopardize the Donor's tax-exempt status or subject the Donor to penalties under Chapter 42 of the Code.

c. Institute Programs. The Foundation and the University shall use all Contributed Amounts solely to support the Institute Programs as stated in this Agreement and shall return to the Donor any Contributed Amount not committed by the Foundation or the University for the Institute Programs.

7. Publicity. The Parties shall consult with each other and mutually agree prior to issuing the initial public announcement of this Agreement. To this end, the Parties have agreed to the contents of the "Executive Summary," attached as Attachment C, which the Parties may agree to use as the initial public announcement of this Agreement. The Parties shall consult with each other and mutually agree prior to issuing publicly the Executive Summary. The Parties shall not use each other's logos without the applicable Party's express written consent.

**8. General Provisions.**

a. The Donor has the right to terminate this Agreement or decline to provide any Contributed Amount in response to a Foundation Grant Report if, in its sole and absolute discretion: (i) the Foundation or the University has materially breached this Agreement; (ii) the Institute Programs are not advancing the Institute's Mission as stated in this Agreement; or (iii) such action is necessary to comply with any law applicable to the Foundation, the University, or the Donor. Such termination or decision not to provide any Contributed Amount in response to a Foundation Grant Report shall be deemed effective upon the expiration of thirty (30) days from the date notice was provided by the Donor to the Foundation or the University. In the event the Donor terminates the Agreement, the Foundation and the University each agree to return all uncommitted Contributed Amounts to the Donor within fifteen (15) days of the Donor's request. The Foundation and the University each represent and warrant that they are not relying on the Donor's proposed funding under this Agreement to incur any obligation or take any action or inaction. Notwithstanding anything to the contrary in the Agreement, the duties and obligations of the Parties shall cease upon expiration or termination of this Agreement.

b. The Foundation and the University agree to keep confidential and not to disclose to any third party the existence of or contents of this Agreement without express written approval from the Donor, except as otherwise may be required by law; including in response to a public records request submitted under applicable State or Federal law. If the Foundation or the University is required to disclose the existence of or the content of this Agreement to any third party, the Foundation and the University agree to provide the Donor with prompt advance written notice of such disclosure.

c. The terms contained in this Agreement supersede all prior oral or written agreements and understandings between the Parties related to the matters contained in this Agreement and shall constitute the entire agreement between the Parties with respect to the matters contained in this Agreement.

d. In the event of a conflict between the provisions stated in the body of this Agreement and those stated in the Proposal, this Agreement shall control.

e. This Agreement shall not be modified or amended except by a writing duly executed by the Parties to this Agreement.

f. The provisions of this Agreement are deemed severable and should any part, term, or provision of this Agreement be construed by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, and provisions will not be affected thereby.

g. No delay or failure on any Party's part to enforce any right or claim which it may have hereunder shall constitute a waiver of such right or claim. Any waiver by any Party of any term, provision, or condition of this Agreement, or of any subsequent default under this Agreement in any one or more instances shall not be deemed to be a further or continuing waiver of such term, provision, or condition or of any subsequent default hereunder.

h. The Parties acknowledge that this Agreement may relate to or be for the benefit of the Schnatter Foundation and its charitable and educational mission. The Parties acknowledge that the Schnatter Foundation has certain rights under this Agreement. The Foundation and the University further acknowledge and agree that they will not directly or indirectly be entitled to the benefit of any waivers, indemnities, releases, or other provisions contained in any agreement between the Donor and the Schnatter Foundation. Otherwise, this Agreement shall not confer any rights or remedies upon any third party other than the Parties to this Agreement and their respective successors and permitted assigns.

i. The Foundation and the University may not transfer or assign their respective interests in the Agreement or any amount to be contributed pursuant to this Agreement without the express written consent of the Donor.

j. All notices, approvals, or requests in connection with this Agreement shall be in writing and shall be deemed given when delivered personally by hand or one business day after the day sent by overnight courier (in each case with written confirmation of receipt or transmission, as the case may be) at the following address (or to such other address as a Party may have specified by notice to the other Party pursuant to this provision):

If to the Foundation:  
Ball State University Foundation  
2800 West Bethel Avenue  
Muncie, IN 47304  
Attn: President & CEO

If to the University:  
Ball State University  
2000 West University Avenue  
Muncie, IN 47306  
Attn: Office of General Counsel

If to the Donor:  
Charles Koch Foundation  
1320 N. Courthouse Road, Suite 500  
Arlington, VA 22201  
Attn: Grant Administrator  
Cc: General Counsel's Office

k. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement or direction. Copies of signatures (whether facsimile or other electronic transmission) to this Agreement shall be deemed to be originals and may be relied upon to the same extent as the originals.

The Parties have hereby executed this Agreement as dated below, but agree that this Agreement is effective as of the Effective Date.

**BALL STATE UNIVERSITY FOUNDATION**

By: Ch - E. O'Neill

Name: Cheryl E. O'Neill

Title: President and CEO

Date: 3-2-16

**BALL STATE UNIVERSITY**

By: T. King

Name: Dr. Terry King

Title: Acting President

Date: 3/2/16

**CHARLES KOCH FOUNDATION**

By: Brian Hooks

Name: Brian Hooks

Title: President

Date: 3/1/16

## ATTACHMENT A

### **Ball State University Foundation and Ball State University Proposal to Support the John H. Schnatter Institute for Entrepreneurship and Free Enterprise**

Ball State University aspires to be among the most student-centered and community-engaged public research universities, transforming entrepreneurial learners into impactful leaders and improving the quality of life for all. Ball State is embracing its legacy of beneficence and entrepreneurship as Indiana's "Entrepreneurial University." The mission of the John H. Schnatter Institute for Entrepreneurship and Free Enterprise is to become a national model for values- and ethics-based entrepreneurship, developing research and talent to help solve contemporary problems and promote understanding of the characteristics and virtues of free enterprise in helping people improve their lives. The Institute embraces the spirit and impact of entrepreneurship coupled to the commitment to do good for and in others, reaching the classroom, studio, and laboratory as well as Indiana business leaders and encouraging entrepreneurial thinking in how the University's leadership manages the University.

The Institute will:

- Engage in cross-campus teaching and training of students, professors, and campus and community leaders in entrepreneurship and free enterprise.
- Inform ripe policy debates about issues affecting entrepreneurship and free enterprise in Indiana.
- Develop a PhD program in Entrepreneurship in accord with University and State policies and procedures within the next five years.

#### **Institute Positions, Activities, and Student Fellowships**

##### **Institute Director**

The Institute's activities and finances will be under the supervision of the Institute Director, who is chosen by the University; with ultimate direction and control of the Institute's activities and finances subject to, and in accordance with, applicable University policies and procedures. Before any faculty, staff, or students become affiliated with the Institute, the Institute Director must provide a recommendation for the individual's affiliation as is appropriate in accordance with University policies. Any individual the Institute Director presents to another academic unit as a possible hire or affiliate of that unit must be recommended by that unit pursuant to the University's and unit's procedures for selecting people for those units. The University will continue to pay the salary and benefits of the Institute Director throughout the Term of the Agreement.

##### **The New Tenure-Track Entrepreneurship Professorship and the Tenure-Track Entrepreneurship Professorship**

The individuals holding the New Tenure-Track Entrepreneurship Professorship and the Tenure-Track Entrepreneurship Professorship will teach general education and honors undergraduates, engage in research, and help ground studies of entrepreneurship in sound economics. These individuals will also devote a significant amount of their time and resources to work related to the Institute. The University currently has listed a junior position in entrepreneurship that, with additional funding proposed, the University intends to fill at a more senior level.

##### **The Tenure Track Economics Professorships**

The individuals holding the Tenure-Track Economics Professorships will teach general education and honors undergraduates, engage in research, and help ground studies of entrepreneurship in sound economics. These individuals will also devote a significant amount of their time and resources to work related to the Institute. The University intends to fill both Professorships at a senior level.



The Operations Manager

The University will select an individual as Operations Manager by the last day of the University's spring 2016 semester.

The Entrepreneurial Learning Academy

This program will focus on educating and supporting faculty members involved in developing courses and participating in other programs in entrepreneurship and free enterprise.

The Entrepreneurial Leadership Academy

This program will focus on educating and supporting university administrative leaders in incorporating principles of entrepreneurship and free enterprise in their work.

The Entrepreneurship Center

This program will provide speakers, courses, and other programs to educate students in entrepreneurship and free enterprise.

The Graduate Assistants

The University will select at least two individuals each year who are graduate students at the University to support the activities of the Institute. All students receiving funds through the Institute will be affiliated with the Institute.

The Undergraduate Programs

These programs focus on education of students in free enterprise and related topics in economics. They currently take place under the direction of a member of the University's Department of Economics, who was selected by the University, and will continue to be so directed.

Research

The Institute Director will engage scholars in high-quality research that addresses questions germane to the mission of the Institute and will help ensure that research results are communicated both inside and outside academia. The Institute and University will become known as producers of research that advances both academic and public understanding of how human well-being may be advanced in Indiana and beyond.

Research and Education Support

The Institute will develop marketing and educational materials to support the Institute's Mission.

**Selection**

The selection of the foregoing positions will follow the University's normal procedures for hiring faculty and staff.

ATTACHMENT B

**Schnatter Foundation Grant Agreement**

ATTACHMENT C

**GRANT AGREEMENT SUMMARY BETWEEN BALL STATE UNIVERSITY FOUNDATION, BALL STATE UNIVERSITY, AND THE CHARLES KOCH FOUNDATION**

The Ball State University Foundation, Ball State University, and Charles Koch Foundation (CKF) have entered into a grant agreement for CKF to provide support for the University's proposal to support the John H. Schnatter Institute for Entrepreneurship and Free Enterprise at the University.

The grant responds to an opportunity presented to CKF by the University and is intended to help promote a robust discussion of ideas at the University and to advance the University's goals for the Institute, which is to become a national model for values- and ethics-based entrepreneurship, developing research and talent to help solve contemporary problems and promote understanding of the characteristics and virtues of free enterprise in helping people improve their lives.

CKF will provide support of up to \$1,085,000 to advance the Institute's mission. The University expects to attract additional contributions to support the Institute. As outlined in the University's proposal, these funds will aid the University's support of the Institute and provide funding for 4 tenure-track professorships, an operations manager, an Entrepreneurial Learning Academy, and Entrepreneurial Leadership Academy, the Entrepreneurship Center, two graduate assistants, and other educational and research activities in the Institute and the University's Department of Economics.

The grant adheres to Ball State University's policies regarding hiring, research, and curriculum and CKF's principles for university giving.

The grant will be used solely for educational purposes and to support the Institute as outlined in the University's proposal. This funding is in addition to the University's ongoing commitment to support the Institute.

The Ball State University Foundation, Ball State University, and CKF attest that this is an accurate representation of the grant agreement.

**BALL STATE UNIVERSITY FOUNDATION**

By: Ch-E. O'Neill

Name: Cheri E. O'Neill

Title: President and CEO

**BALL STATE UNIVERSITY**

By: T. King

Name: Dr. Terry King

Title: Acting President

**CHARLES KOCH FOUNDATION**

By: B. Hooks

Name: Brian Hooks

Title: President

March 1, 2016