



**COMMUNITY FOUNDATION OF THE TEXAS HILL COUNTRY  
AGENCY FUND AGREEMENT  
Non-Endowed Fund**

**THIS AGREEMENT** is made as of the **XX** day of **MONTH, 20XX** between the **Agency, Inc.** (“Agency”), a corporation established under the nonprofit corporation law of the State of Texas, with its principal office located in **Location**, and the **COMMUNITY FOUNDATION OF THE TEXAS HILL COUNTRY** (the “Foundation”), a corporation organized under the nonprofit corporation law of the State of Texas.

**WHEREAS**, the Parties to the Agreement have a common interest in the welfare of the community and in serving charitable purposes for the benefit of the community;

**WHEREAS**, each Party is a qualified charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, and as an organization which is not a private foundation with the meaning of Section 509(a) of the Code. This agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirement of the foregoing provisions of the federal tax laws and regulations issued pursuant there to. The Foundation is authorized to amend this agreement to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention. References herein to provisions of the Internal Revenue Code of 1986 shall be deemed references to the corresponding provisions of any future Internal Revenue Law.

**WHEREAS**, the Foundation has been established with a principal purpose to receive and administer funds for various charitable, educational, religious, or other similar purposes and the Agency has expressed a desire to establish a fund at the Foundation in the nature of a non-endowed fund to provide long-term protection for the operations of the Agency, and the Agency wishes to have the benefits of such a fund.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Establishment of the Fund** – A fund shall be established on at the Foundation and shall be known as the **XYZ Fund**. The Foundation acknowledges receipt of the property listed in Exhibit A attached hereto and made a part hereof as the initial property of the Fund.

\_\_\_\_\_  
Donor Initials

\_\_\_\_\_  
Date

2. **Property of the Fund** – The Fund shall include the property received with the execution of this Agreement, such additional property as may from time to time be transferred to the Foundation by the Agency for inclusion in the Fund and all undistributed income from the foregoing property. The Fund shall be the exclusive property of the Foundation, held by it in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived from it, in accordance with the Articles of Incorporation and Bylaws of the Foundation (as they may be amended from time to time), and the terms of the Agreement, applied in a manner not inconsistent with said Articles and Bylaws.

a. **Additional Gifts:** Subject to the right of the Foundation to reject any particular gift, any person, whether an individual, corporation, trust, estate or organization, may irrevocably transfer additional assets to the Foundation to be part of a separate “Designated Endowment Fund” by written designation to the Foundation. Such assets shall be the exclusive property of the Foundation, held by it in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. Additional contributions by third party donors will be considered to be endowed gifts unless designated otherwise. Distributions from additional contributions will be as set forth in the Foundation’s current Investment & Spending Policy, as modified from time to time, net of fees and expenses set forth in paragraph 7 of this agreement.

3. **Assets of the Fund** - Assets of the Fund may be commingled for purposes of investment with other assets of the Foundation. Control over the investment or reinvestment of such assets and the asset management of the Fund will be exercised exclusively by the Foundation. Upon signing of this fund agreement the Agency wishes the monies to be invested in the:

\_\_\_\_\_ Fully Diversified Investment Account, or the  
\_\_\_\_\_ Fixed Income/Cash Equivalent Account

For accounting purposes, the fair market value of the assets held in the Fund as determined by the Foundation should be reported by the Agency as an asset on the Agency’s balance sheet, and the Foundation will report the Foundation’s determination of the Fund’s fair market value as both an asset and a liability on the Foundation’s balance sheet. The Foundation will make available monthly statements which will report the Foundation’s determination of the Fund’s fair market value at the end of each month, together with: all contributions added to the Fund; all distributions made from the Fund; all income and all expenses allocated to the Fund; all realized and unrealized gains and losses allocated to the fund, and all credits, if any, allocated to the Fund during the report period. The Agency should report all of the information contained in each report on its own books and records for accounting purposes and include the information, as appropriate on its own annual Form 990. The Foundation will include only the value of the Fund as an asset and offsetting liability on its balance sheet.

\_\_\_\_\_  
Donor Initials

\_\_\_\_\_  
Date

4. **Designation of Purpose** – The Fund shall be used for support of the charitable purposes of XYZ Fund.
5. **Fund Distributions** – In transferring its property to the Fund, the Agency intends to create a non-endowed fund. Distributions may be made to the Agency solely at their request provided the following conditions are met:
  - a. The request is from (example: two of the five officers of the Board of Trustees) \_\_\_\_\_ of the \_\_\_\_\_; and
  - b. The withdrawal request must have approval of (example: 75% vote of the Board of Trustees)  
\_\_\_\_\_

Recommendations for such distributions may be made from time to time to the Foundation by the Agency’s Board and are solely advisory and not binding on the Foundation.

6. **Variance Power** – If, over time, the agency: (i) ceases to exist, (ii) is no longer described under Section 501(c)(3) of the Internal Revenue Code of 1986, or (iii) substantially alters its mission so that it no longer fits the donor’s original intent or the Foundation’s mission, the Foundation’s Board will seek alternate beneficiaries to ensure the donor’s original charitable goals continue to be met. However, if the Foundation is unable to find alternate beneficiaries, the Board shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purpose(s) or to any specified organization(s) if in the sole judgment of the Board, such restriction or condition becomes: (i) unnecessary; (ii) incapable of fulfillment; or (iii) inconsistent with the charitable needs of the community or area served.
7. **Cost of the Fund** – The Foundation will provide accounting and related financial management services associated with the Fund. It is understood that the investment objective will be to preserve capital and to increase the fund balance. The Fund will be charged an administrative fee based on a percentage of its balance, from time to time, in addition will include any amounts paid to investment managers or advisors as according to the Foundation’s policies. Fees are reviewed periodically and may increase or decrease from time to time. In addition, the Foundation may require to be reimbursed from the Fund for legal, accounting, or other professional fees incurred on behalf of the Fund.
8. It is intended that the Fund shall be a component part of the Foundation and not a separate trust and nothing in this agreement shall affect the status of the Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, and as an organization which is not a private foundation with the meaning of Section 509(a) of the Code. This agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirement of the foregoing provisions of the federal tax laws and regulations issued pursuant there to. The Foundation is authorized to amend this agreement to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention. References herein to provisions of the Internal Revenue Code of 1986 shall be deemed references to the corresponding provisions of any future Internal Revenue Law.

\_\_\_\_\_  
Donor Initials

\_\_\_\_\_  
Date

9. This Agreement will be subject to the Articles of Incorporation and the Bylaws of the Foundation, as they exist and as they may be amended from time to time. The Articles of Incorporation and Bylaws constitute the governing instruments of the Foundation. The Donor here agrees that the Fund will be administered by the Foundation subject to the Foundation's governing instruments.

**IN WITNESS WHEREOF**, each Party has executed this Agreement by its duly authorized officers effective as the day and year written above.

For **Agency**:

\_\_\_\_\_  
FirstName Last Name, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
FirstName LastName, President, Board of Directors

\_\_\_\_\_  
Date

For the **Community Foundation of the Texas Hill Country**:

\_\_\_\_\_  
Austin Dickson, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Donor Initials

\_\_\_\_\_  
Date

**EXHIBIT A**

**XYZ Fund**

Description of property donated: **\$500,000.**

SAMPLE

\_\_\_\_\_  
Donor Initials

\_\_\_\_\_  
Date