

Community Foundation Santa Cruz County Agency Fund Agreement

This Agency Fund Agreement (this "Agreement") is made effective as of _____, 201__ (the "Effective Date") by and between _____ (the "Organization"), a California nonprofit public benefit corporation, and COMMUNITY FOUNDATION SANTA CRUZ COUNTY (the "Foundation"), a California nonprofit public benefit corporation.

1. Initial Asset Transfer & Fund Establishment.

(a) Initial Asset Transfer. The Fund will initially consist of the property described on Schedule I to this Agreement (the "Initial Deposit").

(b) Fund Establishment. Upon acceptance of the Initial Deposit by the Foundation, a fund shall be established on the books of the Foundation, which shall be known as the "_____ Fund" (the "Fund"). The minimum Initial Deposit shall be no less than Twenty Five Thousand Dollars (\$25,000).

(c) Purpose of Fund. The Fund's general purpose is to promote and further the Foundation's charitable purposes as set forth in the Foundation's Articles of Incorporation and Bylaws. In particular, the Fund is being established solely to provide financial support to the Organization for _____. [specific purpose to be filled in at time of signing.]

(d) Not a Donor Advised Fund. It is the express intent of the Organization and the Foundation that the Fund shall not be treated as a "donor advised fund," as defined in Section 4966(d) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), by virtue of the Fund being described in Internal Revenue Code Section 4966(d)(2)(B)(i), as a fund that benefits a single identified organization, to wit, the Organization.

(e) Agency Endowment Fund. It is intended that the Fund will continue to provide for the charitable purposes described above in perpetuity. The Fund will be an endowment fund, and distributions from the Fund shall be subject to the spending plan for endowed funds approved by the Board of Directors of the Foundation, as the same may be amended from time to time. Currently, the spending plan provides for a 4% annual payout calculated on the average balance of the Fund over 12 trailing quarters (or such shorter period of time as the Fund has been in existence) ending on September 30 each year (each September 30 will be referred to as a "Measurement Date"). The payout

amount, if any, will be disbursed to the Organization by January 31 of the following year; provided, however no distributions shall be made from the Fund unless the Fund has been in existence for not less than four calendar quarters as of the date of the Measurement Date, and only to the extent that accumulated earnings are available to spend on the Measurement Date.

2. Additions to Fund. It is anticipated by the Organization and the Foundation that, from time to time, other assets may be contributed to the Fund by the Organization or by other donors. All contributions accepted by the Foundation shall be considered part of the Fund's principal. Gifts of cash and marketable securities may be accepted and deposited into the Fund at any time. The Foundation will have the discretion to accept or refuse any non-cash contributions, or any cash contribution in an amount less than Two Hundred Fifty Dollars (\$250). All of the property transferred to the Foundation for deposit in the Fund, including additional contributions, and any net income or net losses derived from the investment of such property as provided herein shall be collectively referred to as the "Assets" and shall be administered and distributed in accordance to the provisions of this Agreement, including, without limitation, for the purpose set forth in Section 1(c) above.

3. Ownership of Assets. All gifts and contributions made to the Fund by the Organization or any other person or entity are irrevocable and become the sole property of the Foundation. The assets of the Fund will, at all times, be the property of the Foundation, held by the Foundation in its corporate capacity as a component fund of the Foundation under Treasury Regulation Section 1.170A-9(e)(11), and the Fund will not be deemed a trust fund held by the Foundation in a trustee capacity.

4. Investment Pool. The Foundation will hold, manage, invest and reinvest the Assets as part of the Foundation's investment portfolio consistent with the Foundation's investment policy, a copy of which is available upon request. Although the Assets may be commingled with other assets of the Foundation, the Fund's separate identity will be maintained. The Assets will be managed in the investment pool set forth in Exhibit A to this Agreement that is marked with an "X." The Organization may recommend that the Assets be managed in one or more other investment pool(s) by submitting its recommendation to the Foundation in writing, which recommendation will be considered and evaluated by the Foundation. The Organization may request to change the fund's investment pool only once per calendar year. If there is more than one fund representative, all must sign the request. In making these changes in investment pools, the Foundation will not in any way be trying to "time the market." Approved changes will be effective by the end of the first month of the quarter

following the request (e.g. If the request is received between January 1 and March 31, the fund may be moved on or before April 30).

5. No Guarantee of Investment Return.

(a) Rate of Return. The Foundation does not guarantee that the Organization will earn a particular rate of return with respect to the investment of the Assets; rather, the Assets shall be invested in the investment pool selected in accordance with Section 4 above and shall earn the identical return on those assets in said investment pool that the Foundation earns with respect to its other assets invested in that particular investment pool. All income and capital gains or losses of the investment pool in which the Assets are invested shall be allocated to the Fund, on a monthly and pro rata basis, based upon the ratio that the value of the Assets invested in the investment pool bears to the aggregate value of all assets invested in said pool.

(b) Diminution of Value. The Foundation will not be liable to the Organization for any diminution in value of the Assets, including, but not limited to, losses directly or indirectly caused by acts of war, acts of terrorism, labor disputes, exchange or market decisions, including the suspension of trading, market volatility, trade volume, or by government restriction or otherwise.

6. Fees & Expenses.

(a) Service Fee. In order to cover its costs with respect to the management services provided to the Fund by the Foundation, the Foundation shall charge the Fund the service fee determined in accordance with the formula set forth on Exhibit B, attached hereto and incorporated herein by reference ("Service Fee"). Said formula is subject to change from time to time on advance notice of such change to the Organization.

(b) Investment Management Fees. Investment management and other fees and costs charged by the investment managers managing the investment pool in which the Assets are invested shall be allocated and charged to the Fund on a pro rata basis, based upon the ratio that the value of the Assets invested in said investment pool bears to the aggregate value of all assets invested in said pool ("Investment Management Fees").

(c) Direct Expenses. In addition to the Investment Management Fees described in Section 6(b) above, the Foundation may, from time to time, incur exceptional third-party expenses in connection with the Fund, including but not limited to legal, accounting, and other professional fees and related charges (collectively, the "Direct Expenses"). Such Direct Expenses may be allocated and

charged to the Fund. Where such Direct Expenses relate to one or more investment pools in which Assets were invested, they will be allocated and charged to the Fund on a pro rata basis, based upon the ratio that the value of the Assets invested in the applicable investment pool bears to the aggregate value of all assets invested in said investment pool.

(d) Payment of Fees and Expenses.

(1) *Service Fee.* The Service Fee shall be due and payable in arrears on a monthly basis and shall be deducted from the Assets.

(2) *Investment Management Fees.* The Investment Management Fees shall be deducted from the Assets in accordance with agreements between the Foundation and the applicable investment managers for the pool or pools in which the Assets are invested.

(3) *Direct Expenses.* The Foundation shall be entitled to reimbursement for Direct Expenses out of the Assets within fifteen (15) days following the Foundation's delivery of a notice to the Organization of its intent to be reimbursed.

7. **Reports.** The Foundation shall report the investment performance of the investment pool in which the Assets are invested. Reporting shall be made on a quarterly basis approximately thirty (30) days following the end of each calendar quarter during the term. Audited annual financial statements of the Foundation will be made available to the Organization if requested.

8. **Compliance with Internal Revenue Code.** Nothing in this Agreement shall affect the status of the Foundation or the Organization as organizations described in Internal Revenue Code Section 501(c)(3), and as organizations that are not private foundations within the meaning of Section 509(a) of said Code. This Agreement shall be interpreted to conform to the requirements of the foregoing provisions of the Internal Revenue Code and any regulations issued pursuant thereto. The Foundation is authorized to amend this Agreement to conform to the provisions of any applicable law or government regulation.

9. **Dissolution of the Foundation.** In the event of the dissolution of the Foundation, or in the event the Foundation ceases to be a Charitable Organization (defined below), the Assets remaining in the Fund, after payment or making provision for payment of any fees, expenses or other liabilities properly chargeable to the Fund, shall be distributed:

(a) to the Organization; or

(b) if the Organization is not then in existence or has ceased to be a Charitable Organization, to one or more such other Charitable Organizations located in Santa Cruz County that serve charitable purposes that are similar to those of the Organization as the Foundation's Board of Directors shall determine.

As used in this Agreement, a "Charitable Organization" is a nonprofit public benefit corporation or a charitable trust that is organized under the laws of the State of California and recognized by the Internal Revenue Service as being described in Internal Revenue Code Section 501(c)(3) other than a "private foundation" (as defined by Internal Revenue Code Section 509(a)).

10. Dissolution of the Organization. In the event of the dissolution of the Organization, or in the event the Organization ceases to be a Charitable Organization, the Foundation shall maintain the Fund; provided, however, the purposes of the Fund shall be modified to provide financial support to one or more such other Charitable Organizations located in Santa Cruz County that serve charitable purposes similar to those of the Organization as the Foundation's Board of Directors shall determine.

11. Merger or Change in Structure of the Organization. If the Organization merges with another organization, the entity resulting from such a merger shall succeed to the rights, powers and privileges of the Organization under this Agreement, but only if such resulting entity is a Charitable Organization. If the resulting entity is not a Charitable Organization, the Foundation shall maintain the Fund, and the Fund's purposes shall be modified in the same manner as is described in Section 10 above.

12. Representations and Warranties. The Organization and the Foundation each represent and warrant to each other that:

(a) it has received a ruling from the Internal Revenue Service (the "Service") that it is an organization described in Internal Revenue Code Section 501(c)(3) other than a private foundation and a ruling from the California Franchise Tax Board ("FTB") that it is an organization exempt from California income and franchise taxes under California Revenue & Tax Code ("California R&T Code") Section 23701d; (b) the facts and circumstances forming the basis for the issuance of these rulings have not substantially changed since the date of issuance thereof; and (c) the rulings have not been revoked;

(b) it shall promptly notify the other party in writing in the event the Service or the FTB revokes its ruling that the Organization is a tax exempt organization described in Internal Revenue Code Section 501(c)(3) other than a private foundation or Section 23701d of the California R&T Code, as the case may

be, or if the Service, the FTB or the California Attorney General's office has commenced proceedings or an investigation that may result in any of these actions; and

(c) this Agreement has been duly authorized by requisite action of the representing party and has been executed on behalf of the representing party by persons authorized to do so.

13. Notice. Any notice required or permitted to be given by this Agreement shall be in writing and shall be deemed given (1) when delivered in person, (2) when dispatched by facsimile or electronic mail transfer (confirmed in writing by postage prepaid first class air mail simultaneously dispatched), (3) when sent by nationally-recognized overnight courier service (with receipt confirmed by such overnight courier service), or (4) when sent by registered or certified mail, to the other party at the address of such party set forth below or at such other address as such party may from time to time specify in writing to the other party in accordance with this Section 13.

If to the Organization:

[Name of the Organization]
[address]
Attn: Chief Executive Officer

If to the Foundation:

Community Foundation Santa Cruz County
7807 Soquel Drive
Aptos, CA 95003
Attn: Robin Larsen

14. Amendment. This Agreement may be amended only by an agreement in writing approved by a majority of the Board of Directors of the Foundation and the governing body of the Organization. No amendment shall be valid if it would be inconsistent with or jeopardizes the Foundation's status as a Charitable Organization.

15. Variance Power. The Organization acknowledges and agrees that the Fund and all of the Assets will be administered by the Foundation in accordance with the terms and conditions of the Foundation's Articles of Incorporation and Bylaws, and applicable California and Federal statutes as may be amended from time to time. The Organization also acknowledges that, notwithstanding any provision contained in this Agreement to the contrary, the Foundation's Board of Directors has the sole variance power to modify any restrictions or conditions

imposed upon the Fund or the Assets if, in the judgment of the Foundation's Board, such restriction becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes or needs served by the Foundation.

16. Arbitration. The Organization hereby agrees that all controversies which may arise between the Foundation and the Organization concerning any transaction or the construction, performance, or breach of any provision of this Agreement, whether entered into prior to, on, or subsequent to the date herein, shall be determined by arbitration. Any arbitration shall be held in Santa Cruz County, State of California, and shall be governed by the rules of the American Arbitration Association and the laws of the State of California.

17. No Partnership. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between the Foundation and the Organization. Neither the Organization, nor its governing Board nor any representative of said Board shall have any right to obligate or bind the Foundation in any manner whatsoever, and nothing in this Agreement shall give, or is intended to give, any rights of any kind to any third persons.

18. Miscellaneous.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard for the conflicts of laws principle thereof.

(b) The captions of this Agreement are included for convenience only and shall in no way define or limit any of the provisions hereof or otherwise affect their construction or effect.

(c) Neither party may assign any of its rights or delegate any of its duties under this Agreement.

(d) If in any jurisdiction any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other parties or circumstances.

(e) This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument.

(f) This Agreement, together the exhibits and other documents referred to herein, contains the entire agreement of the parties and supersedes all prior and contemporaneous negotiations, correspondence, understanding, letters of intent, and agreements, whether verbal or written, between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF, the Organization and the Foundation have caused this Agreement to be executed as of the date written above.

COMMUNITY FOUNDATION SANTA
CRUZ COUNTY

[Name of Organization]

By: _____

Name: Lance Linares

Title: Chief Executive Officer

By: _____

Name: _____

Title: _____

Date: _____

Schedule I

Initial Deposit

SAMPLE

Exhibit A

Investment Pools

There are several choices depending on duration of Fund and risk tolerance. Endowed funds may be invested in either the Long-Term Portfolio or the Socially Responsible Long-Term Portfolio. Nonendowed funds may be invested in one of any of the following: the Long-Term Portfolio; the Socially Responsible Long-Term Portfolio; the Short Duration Fixed Income Portfolio; or the Cash Management Portfolio.

Please check only one of the following pools by placing an "X" in front of it:

- Long-Term:** Invested for long-term growth in accordance with the Foundation's investment policy.
- Socially Responsible Long-Term:** Invested similarly to Long-Term, with the distinction being that this portfolio includes companies that are "screened" to exclude those that make Alcohol, Nuclear Power, Firearms, Tobacco, Military Weapons, Life Ethics, Gambling, and Adult Entertainment, and to include those with good records in Environment, Diversity, Overseas Operations, Community/Employee Relations, and Product Quality/Safety.
- Short Duration Fixed Income:** Invested primarily in short-duration bonds.
- Cash Management:** Highly liquid.

Exhibit B

Service Fee

In consideration of the management services provided to the Fund by the Foundation, the Foundation shall be compensated monthly Service Fee determined as follows:

The annualized Service Fee will be an amount equal to the greater of: (a) \$250 or (b) 1.5% of the Fund balance for Agency Endowment Funds and the greater of: (a) \$450 or (b) 1.75% of the Fund balance for Agency Flex Funds. Based upon the foregoing annualized Service Fee formula, the monthly Service Fee:

- a. for Agency Endowment Funds will equal 0.125% of the balance of the Fund as of the last day of the month and will be due and payable in arrears on a monthly basis; and
- b. for Agency Flex Funds will equal 0.14583% of the balance of the Fund as of the last day of the month and will be due and payable in arrears on a monthly basis.

In the event the aggregate amount of Service Fee paid out of the Assets for the year is less than \$250 for Agency Endowment Funds and less than \$450 for Agency Flex Funds, the difference in the two amounts shall be due and payable and shall be deducted from the Assets.