



AGENCY FUND AGREEMENT

This Agreement is made as of the _____ day of _____, 20XX, between NonProfit Organization, a corporation established under the nonprofit corporation law of the State of Maine, with its principal office located in HomeTown, Maine, and the Maine Community Foundation ("Foundation"), a corporation organized under the nonprofit corporation law of Maine with its principal office located in Ellsworth;

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

WHEREAS, each Party is a qualified charitable organization (as defined herein); and

WHEREAS, one of the charitable purposes of the Foundation is to receive and administer funds for various charitable and educational purposes and for other charitable organizations in the HomeTown community; and

WHEREAS, various interested persons have expressed a desire to establish a fund at the Foundation to provide a stream of current income to the NonProfit Organization and to provide long term protection of the assets in the fund, and NonProfit Organization is desirous of having such a fund.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Fund. A fund shall be established on the books of Foundation which shall be known as the NonProfit Organization Fund ("Fund"). Foundation acknowledges receipt of the property listed in Schedule "A" attached hereto and made part hereof as the initial property of the Fund.
2. Property of the Fund. The Fund shall include the property received herewith, such property as may from time to time be transferred to Foundation by NonProfit Organization for inclusion in the Fund, such property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by Foundation, and all undistributed income from the foregoing property. The Fund shall be the property of Foundation held by it in its corporate capacity and shall not be deemed a trust fund held by it in a trustee capacity. Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived there from, in accordance with the Articles of Incorporation and Bylaws of Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles and Bylaws.
3. Designation of Purposes. The Fund shall be used for support of the charitable or educational purposes of the NonProfit Organization and its affiliated agencies.

4. Distributions of Income. A percentage of the market value of the Fund (“annual spending policy”) shall be paid and distributed to NonProfit Organization at least annually, or on a schedule to which the Parties may from time to time agree.
5. Other Distributions. Distributions in excess of the “annual spending policy” of the Fund may be made to NonProfit Organization in any year as determined by the Board of Directors of the Foundation. Recommendations for such distributions may be made from time to time to Foundation by a two-thirds vote of NonProfit Organization governing board. Recommendations of the governing board shall be solely advisory and not binding on Foundation, but approval of such distributions by the Foundation shall not be unreasonably withheld.
6. Variance.
 - (a) Foundation agrees that if its Board of Directors proposes to exercise the variance power¹ stated in the Articles of Incorporation as amended from time to time, the exercise of such power shall not be effective earlier than at least thirty (30) days after Foundation notifies NonProfit Organization in writing of (1) its intent to exercise such power and (2) the manner in which Foundation proposes to vary the purposes, uses or methods of administration of the Fund. During the notice period, NonProfit Organization may advise Foundation of its views regarding the proposed exercise of the power and take such other action as it deems appropriate. If Foundation becomes aware of any other action instituted or proposed by any person to vary the purposes, uses or method of administration of the Fund, it will promptly notify NonProfit Organization.
 - (b) If Foundation ceases to be a qualified charitable organization or if Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities, properly chargeable to the Fund, be distributed to NonProfit Organization. If NonProfit Organization is not then a qualified charitable organization, said assets shall be distributed in such manner and to such organization or organizations in the HomeTown and surrounding community as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of NonProfit Organization.

¹ Maine Community Foundation Articles of Incorporation, Article Second. The Board of Directors shall have the power to modify, consistent with State law including seeking approval of the appropriate court or Attorney General, where applicable, any restriction or condition on the distribution of funds for any specified organizations if in the sole judgment of the Board when (without the necessity of the approval of any participating trustee, custodian, or agent), **such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community.**

7. Definitions and Construction.

(a) As used in this Agreement

- (1) "Qualified charitable organization" means an organization described in §501(c) (3) and which is other than a private foundation under §509(a) of the Internal Revenue Code.
- (2) References to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986 as the same may be amended from time to time and the corresponding provision of any future U.S. Internal Revenue Code.

(b) It is intended that the Fund shall be a component part of Foundation and that nothing in this Agreement shall affect the status of Foundation as an entity which is a qualified charitable organization. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of Foundation.

(c) This Agreement shall be governed and construed in accordance with Maine Law.

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

AUTHORIZED SIGNATURE: _____

TITLE: _____

ACCEPTED: MAINE COMMUNITY FOUNDATION, INC.

BY: _____

TITLE: _____

SCHEDULE A

(List property transferred to community foundation to establish the fund)

SAMPLE