

Dear User: This form is one of the community foundation fund agreements that CMF has drafted for its members and as a service to the field. You may find this form helpful in reviewing your own forms, training new staff, or as a reminder of the applicable laws and the various factual situations that may arise in the future that are prudent to contemplate at fund inception. We hope that you find it useful! If you submit these forms to National Standards, please note that it is the CMF Form on the top of the agreement and track any changes you make to that form, in order to facilitate your review. If you have any questions or comments, please reach out to joertel@michiganfoundations.org. Thank you!

**COUNCIL OF MICHIGAN FOUNDATIONS**

**AFFILIATE FUND AGREEMENT GUIDESHEET**

An Affiliate Fund (also called a “Geographic Affiliate Fund”) typically is established to provide support for a particular geographic area without spending the funds necessary to establish and maintain a separate community foundation. Sometimes they occur when an existing community foundation loses a significant funding source or otherwise is not sustainable. The same as with community foundations, they say that if you’ve seen one affiliation arrangement, you’ve seen one. A few things to keep in mind with Affiliate Funds (this is not an exhaustive list but deals with some of the most common questions CMF has received over the years):

* “Affiliate” of a community foundation is not defined. The term is used to describe anything from a component fund of a community foundation to an informal partnership or contractual relationship with an entirely separate legal entity. A single community foundation may have many affiliates.
* An Affiliate may be structured as a component fund of the CF or a supporting organization. Given the restrictions surrounding supporting organizations, this is not often a recommended structure (please seek advice!). Some existing community foundations keep their entity and their tax-exempt status but “affiliate” for purposes of receiving support from another CF. Depending upon the type of support provided, such as if it’s only back office services, it may make sense to simply enter into an agreement for the provision of those services. Note that it can become a thorny situation if an independent c3 raises money in its own name but then turns all of those contributions over to its “affiliated” community foundation.
* In Michigan, a component fund may not be called “community foundation” because that name implies that the fund itself is a charitable entity, nonprofit corporation. In some cases, it may make sense for the community foundation to secure a “dba” or “doing business as” name of the affiliate fund so that the name can legally be used to refer to that fund. Otherwise, donors should make payments to the CF, and they can put a notation that it is for the particular affiliate fund. Increasingly, CFs are having problems cashing checks that are made out to the name of the affiliate fund as it is not a legal entity.
* For purposes of National Standards, an affiliate that is a component fund may use the National Standards seal (please see their guidelines for appropriate wording); if the affiliate is a separate legal entity, then it must secure its own certification.
* In many cases, the affiliating fund will want the ability to become independent at some point if its assets grow. Just as with an agency fund, the agreement cannot mandate that the assets be returned or forwarded upon request of the affiliate; however, written into the agreement may be more objective guidelines by which the CF will transfer the affiliate funds. (*See the form agreement*).
* Be careful in limiting the geography too much – for example, it’s typically not just to support charitable activities within the defined region, but also the grantmaking of those (individuals and corporations) located in such area, wherever they may choose to make such grants (for example, supporting victims of a major disaster that occurs outside of that area but donated by residents of the area covered by the affiliate).
* From experience, affiliate funds that fail to thrive are ones that don’t have at least a staff person dedicated to fundraising on behalf of such affiliate, including by organizing volunteers. Keep in mind that all fundraising of a component fund should be in accordance with the donor initiated fundraising policy of the CF.
* In contemplation of potential separation in the future, it is prudent to note in the fund agreements for contributions to the affiliate something to the effect of, “As a geographic affiliate fund of [CF], the assets of [Fund] may be transferred to another charitable entity if [insert objective standards or “certain factors are satisfied and the CF’s Board of Directors is in agreement.” Just to put donors on notice that this may happen in the future, which provides for greater donor transparency.
* For any non-endowed Fund (or even regarding dipping into the corpus of endowed funds), it is good to have a policy in place in the event that donors request to distribute a large amount of assets from the Fund. CF liquidity could be an issue, and there could be penalties if investments have to be liquidated. Also, the CF should think about precedent setting as donors will very likely tell other donors that the CF permitted them to do so.
* Section 7 – Explanation of Miscellaneous (aka, “Legal boilerplate” or “what the lawyers love and foundations highly dislike”)
	+ *Governing Law; Venue*. If both the donor and the CF are residents of the same county, then governing law and venue are likely not needed as that will be a given (it doesn’t hurt to keep it in, just in case, however!)
	+ *Entire Agreement; Beneficiaries; Counsel*. This is language so that (i) no representations or assertions made orally or otherwise outside of the “4 corners” of the fund agreement can be brought into evidence; (ii) no one other than donor and the CF have any right to claim that they are entitled to benefits under the agreement; and (iii) donor is only relying on donor’s own advisors for advice. This is particularly key because donors always ask CF’s for tax advice, and we usually give it to them, hopefully with a disclaimer, but let’s be safe in the fund agreement.
	+ *Due Authorization; Electronic Signatures;Counterparts*. This seems like unnecessary legal mumbo jumbo, but it’s good to have in any agreement.
* Investment of non-endowed funds - by nature, non-endowed funds have a much shorter time period and thus less time for the value to recover in the event of a market crash. Foundations should consider establishing a formal policy that makes it clear whether these funds will be invested in the endowment investment pool or placed in a more secure investment pool. It should be noted in either case the donor does not control the investment of their gift. For foundations placing these types of funds in their endowment investment pool, they should make the donors aware of potential losses of principal by including an attachment with the donor’s acknowledgement of the investment risk.

*Thank you to Indiana Philanthropy Alliance and to the CMF members who assisted in this project: Johanna Allen (Community Foundation of Greater Rochester); Nancy Boxey (Lapeer County Community Foundation); Kathy Dickens (Four County Community Foundation); Dennis Fliehman (Capital Region Community Foundation), Laura Heintzelman (Manistee Area Community Foundation), Brett Hunkins (Community Foundation of Greater Flint), Jamie Hunter (Ann Arbor Area Community Foundation).*

*This sample agreement is for illustrative purposes only. The document should be reviewed by your legal counsel to be certain that it is appropriate for your charitable goals and will accomplish the purposes you intend.*

**FORM OF**

**AFFILIATE FUND AGREEMENT
BETWEEN**
[Insert Name of community foundation]
**AND**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert donor name]

**[ENDOWED][UN-ENDOWED]**

 **THIS AGREEMENT** (the “***Agreement***”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between [insert name of community foundation], a Michigan nonprofit corporation with tax exempt status as a public charity (the “***Community Foundation***”), and \_\_\_\_\_ , as representatives of the independent group desiring to form a geographic affiliate fund (“***Representatives”***).

1**. Irrevocable Gift; Name; Fund Assets; Purpose.** Representatives hereby [transfer irrevocably to the Community Foundation the property described in the attached Exhibit A to] establish an Affiliate Fund to be known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fund (the “***Fund***”). Subject to the right of the Community Foundation to reject any particular gift, from time to time the Community Foundation may accept additional gifts of property to be added to the Fund.

All gifts, bequests, and devises to the Fund shall be irrevocable once accepted by the Community Foundation and shall become assets of the Community Foundation, which has exclusive legal ownership of, and control over, them and the earnings thereon.

The purpose of the Fund (“***Charitable Purposes***”) is to support charitable activities in or near [insert geographic area], including supporting the charitable grantmaking of individuals and entities located within such area, wherever it may be.

2. **Fund Distributions; Advisory Committee.**  [If endowed: The Fund is endowed, meaning that Representatives intend that it exist into perpetuity. The amount of the Fund that will be appropriated for expenditure or accumulated is subject to the Community Foundation’s [Endowment Policy][Spending Policy], which is subject to change by the Community Foundation from time to time, and to the Community Foundation’s variance power (as discussed in Section 4 below).][*Optional for endowed*: Assets in the Fund will accumulate until the Fund balance reaches $\_\_\_\_\_; *provided, however*, that if the Fund balance does not reach that amount by [insert date], then annual distributions will begin at that time.]

Distributions from the Fund will be made from time to time for the Charitable Purposes.

 The Community Foundation hereby appoints an advisory committee, with initial members set forth on Exhibit B, to advise on distributions from the Fund for the Charitable Purposes. While it will be the policy of the Community Foundation and the Board to approve recommendations by the Committee for the disbursement of grants (as long as the grant is in compliance with the policies and procedures of the Community Foundation, the Charitable Purposes, and applicable law), as is required by law, advisory committee recommendations are advisory in nature only, and the Community Foundation is free to accept or reject such advice, to replace advisory committee members, and to abolish the advisory committee in its sole determination.

[*Optional*: In accordance with Community Foundation policy, the Fund will be distributed and closed if it falls to the Minimum Fund Size established by our Board of Directors, which is currently set at $\_\_\_\_\_\_\_. ]

3. **Applicable Policies; Component Fund; Variance Power.** The Fund shall be subject to the Community Foundation’s Articles of Incorporation, Bylaws, and other Community Foundation policies that are subject to change from time to time and [available on the Community Foundation’s website][available upon request]. It is intended that the Fund will be a component fund of the Community Foundation which shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B) (or corresponding provisions of any subsequent federal tax laws), including the authority to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Community Foundation’s Board of Directors unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Community Foundation or the needs of the community it serves. Although the Fund assets will be accounted for separately for purposes of reporting to Donor(s), such assets shall not be deemed trust property of a separate trust. This Agreement will be interpreted in a manner consistent with the foregoing intention and so as to conform to any applicable tax laws and regulations.

4. **Services to be Provided by the Community Foundation**. The Community Foundation shall provide the following services to the Fund: [Tailor these as agreed upon or applicable to your processes]

• Inclusion of the Fund in the Community Foundation’s form 990 tax return, audit and state filings.

• Quarterly reports on all cash receipts and disbursements of the Fund, including investment returns.

• Mention of the Fund in the Foundation’s communication materials, including the Annual Report, newsletters, year-end letter, website, and other communications.

• Staff support of Advisory Committee meetings.

• Staff support in evaluating grant requests, monitoring grants funded, and other reasonable grant support as requested by the Advisory Committee.

• Staff support in endowment building techniques, such as identifying potential donors, opportunities for public speaking, and outreach to professional advisors.

• Provision of Community Foundation’s form fund agreements; any variations from which shall be approved in writing by appropriate Community Foundation staff.

• Donor relations support, including language and mechanisms for receiving and making gifts and creating funds.

• Charitable contribution acknowledgements.

• Other services as requested by the Fund’s Advisory Committee from time to time and approved by the Foundation’s Board of Directors.

5. **Limitations**. Members of the Advisory Committee may not hold themselves out as having power or authority to represent the Community Foundation or to create any contract, or obligation on behalf of, in the name of, or binding upon Community Foundation. Advisory Committee members are volunteers of the Community Foundation and not employees, directors or officers, unless expressly designated in writing as such. The Community Foundation's staff, acting in accordance with the policies adopted by its Board of Directors, shall advise and approve in advance all public statements regarding the Fund, including but not limited to public relations materials, information, fundraising, or advertising. All fundraising shall be in accordance with the Community Foundation’s Donor Initiated Fundraising Policy, and all fund agreements shall be signed by the appropriate Community Foundation staff member.

6. **Costs of the Fund**. It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Community Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then- current administrative fee policy identified by the Community Foundation, as such policy may be amended by the Community Foundation from time to time. Any costs and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation’s costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund, also shall be paid from the Fund. Further, the Advisory Committee may request particular services that are not included in the general administrative fee, as set forth in more detail on Exhibit D.

7. **Transfer of the Fund**. The Advisory Committee may request that the Fund be transferred to become a geographic affiliate of another community foundation or to a newly formed community foundation. The Community Foundation’s Board will review the following factors, among others, in determining whether to grant such request:

1. Fund net asset size (alone, or in combination with the new affiliating entity) must be at least $10,000,000.
2. The entity to which the Fund is to be transferred shall provide proof of incorporation under the laws of the State of Michigan, good standing, and shall have active tax-exempt status as a 501(c)(3) public charity under Section 509(a)(1) or 509(a)(2). Transfers to Section 509(a)(3) supporting organizations will be considered under special circumstances.
3. Possession of an active charitable solicitation license from the State of Michigan.
4. Appointment of a Board of Directors/Trustees broadly representative of the geographic area currently covered by the Fund.
5. Adoption of a comprehensive plan to address its future financial viability and current administrative and legal requirements.
6. Either accreditation by National Standards for US Community Foundations or adoption of a resolution to begin the accreditation process.
7. Provision in the Articles of Incorporation for a dissolution clause that names the Community Foundation as the recipient of its assets in the event it loses its recognition as a qualified charitable organization or ceases to function, in which case any funds established with the new community foundation shall become geographic component funds of the Community Foundation, designated for use to carry out the Charitable Purposes.
8. The receipt by the Foundation of a legal opinion from a properly insured Michigan law firm selected by the Community Foundation, affirming that the proposed transfer of the Fund meets the requirements of applicable law.

The Community Foundation may, upon sixty (60) day’s notice to the Advisory Committee, transfer the Fund to another properly qualified community foundation.

8. **Investment of Fund Assets**. The Community Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Community Foundation’s other assets. [Optional: The Advisory Committee may make recommendations to the Community Foundation for investment of your Fund as described in [insert]; as with grant recommendations, investment recommendations are advisory in nature only.]

9. **Miscellaneous.**

a. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules), and the federal laws of the U.S.  The parties agree that any litigation arising between the parties in relation to this Agreement shall be initiated and maintained in the Circuit Court of the County of \_\_\_\_\_\_\_\_\_\_\_, Michigan, or the U.S. District Court for the \_\_\_\_\_\_\_\_\_\_\_\_ District of Michigan, and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts.

b. Entire Agreement; Beneficiaries; Counsel*.* This Agreement contains the entire understanding of the parties, and there are no other agreements or understandings, written or oral, in effect between the parties relating to the Fund. Nothing in this Agreement will be construed as giving any person (including Designee), other than the parties hereto, and their respective successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof. The parties may have discussed tax and legal consequences of this Agreement, but each may rely only upon the advice of its own, engaged advisors and neither shall have liability to the other for any such discussion, opinions or advice.

c. Due Authorization; Electronic Signatures/Counterparts. The undersigned are duly authorized and competent to enter into this Agreement, which may be executed and delivered in two or more counterparts, including by electronic transmission, each of which shall be deemed an original and all of which together shall be deemed to constitute one and the same Agreement. This Agreement may be executed by a handwritten signature or by an electronic signature. Where the Donor has delivered this Agreement by electronic transmission, it shall forthwith deliver an originally executed copy of this Agreement to the Community Foundation, but the failure to do so shall not affect the validity or enforceability of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**DONOR(s):**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

**COMMUNITY FOUNDATION**

[INSERT NAME]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**INITIAL FUND ASSETS**

Cash: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Publicly Traded Securities:

Other:

**EXHIBIT B**

**Advisory Committee Membership [MODIFY TO YOUR PROCEDURES]**

All Advisory Committee members shall be residents of, employed in, or otherwise have long-time associations with the geographic area served by the Fund and should reflect the breadth and diversity of the Fund’s geographic locale.

The Advisory Committee shall include one Community Foundation director. The initial Advisory Committee shall consist of the following individuals, in addition to Community Foundation staff/Directors:

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Address** | **Telephone; Email** | **Length of Term****(1-3)** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

The Advisory Committee terms shall be staggered so that not all terms expire at the same time. All Advisory Committee members named above shall serve an either a 1, 2, or 3-year term, as indicated above, assigned by lot so that the Advisory Committee is composed of roughly an equal number of terms expiring during each year. Thereafter, Advisory Committee Members shall serve 3-year terms of office.

The Initial terms of office shall begin on the effective date of the agreement establishing the Fund, to which this exhibit is attached, and all subsequent terms shall begin on [insert date].

At least sixty (60) days prior to the expiration of an Advisory Committee member’s term of office, the Advisory Committee shall make a written recommendation to the Foundation for the appointment of a successor Advisory Committee member. In the event of a vacancy on the Advisory Committee due to an Advisory Committee members’ death, resignation, incapacity to act, or removal, the remaining Advisory Committee members shall make a recommendation to the Community Foundation’s Board of Directors as to new members to fill such vacancy.

No Advisory Committee member shall be eligible for reappointment for a term which, if fully served, would result in his or her having served as an Advisory Committee member for more than six (6) consecutive years; an exception may be made for those initial Advisory Committee appointees serving less than two full terms. An Advisory Committee member may be removed by the Community Foundation at any time, but before taking action to remove an Advisory Committee member the Foundation shall provide the Advisory Committee with not less than thirty (30) days advance notice of its intended action and an opportunity to comment to the Foundation concerning the proposed removal.

**EXHIBIT C**

**Advisory Committee Policies and Procedures [Provided only by way of example]**

The Advisory Committee may suggest to the Community Foundation’s Board of Directors policies and procedures for Advisory Committee’s activities that are not inconsistent with the Community Foundation’s governing documents, policies and procedures or the Fund Agreement.

The Advisory Committee is constituted to provide insight into the needs of the community served by the Fund. It shall:

* Abide by the Community Foundation’s Policies and Standards
	+ Maintain confidentiality of Advisory Committee deliberations,
	+ Abide by the Community Foundation’s conflict of interest policy, and
	+ Act in accordance with all relevant Foundation policies.
* Promote the Fund
	+ Consistent with the Community Foundations Donor Initiated Fundraising Policy on donor fundraising, solicit donations and contributions to the Fund with the assistance of Foundation staff.
	+ Have as a goal the creation of permanent funds to benefit the geographic locale served by the Fund.
	+ Liaise with community leaders, funders, professional advisors and others in the geographic locale served by the Fund.
* Advise Grant Requests
	+ Keep up-to-date on relevant issues within the geographic area served by the Fund, in addition to the field of philanthropy in general.
	+ Make recommendations to the Community Foundation as to distributions from the Fund.
	+ Upon request, advise the Community Foundation concerning grants from other funds to charitable organizations in the geographic area served by the Fund.
* Strategic and Succession Planning
	+ Help identify community members to serve on the Advisory Committee.
* Perform additional duties as necessary or appropriate with respect to the Fund.

In fulfillment of these duties and responsibilities, the Advisory Committee shall have the discretion to form separate Fund Development and Grant Distribution subcommittees, to include such additional outside members as the Advisory Committee may deem appropriate.

**EXHIBIT D**

**Particular Costs not Included in Administrative Fee**

* Legal services or legal advice requested by the Fund or incurred by the Community Foundation in the administration of the Fund.
* Costs of specialized marketing materials particular to the Fund, such as brochures, stationery, etc.
* Mailings made specifically for the Fund.
* Extraordinary fund development or grant activities related to the Fund.
* Meeting expenses such as facility rental, refreshments, meals, travel, etc.
* Costs of additional insurance coverage for special events, particular activities, etc.