

AGENCY FUND AGREEMENT

THIS AGREEMENT is made as of the ____ day of ____, 20 ____, at San Angelo, Texas between the _____ herein called the “Charity”, a corporation established under the nonprofit corporation law of the State of Texas, with its principal office located in Tom Green County, Texas, and the San Angelo Area Foundation, herein called the “Foundation”, a corporation organized under the nonprofit corporation law of Texas with its principal office located in Tom Green County, Texas.

WHEREAS, the Parties to the Agreement have a common interest in the welfare of the San Angelo area and in serving charitable, scientific or educational purposes for the benefit of the San Angelo area.

WHEREAS, each Party is a qualified charitable organization (as defined in paragraph 7); and

WHEREAS, the Foundation has been established with a principal purpose to receive and administer funds as endowments for various charitable, scientific or educational purposes and organizations in the San Angelo area, various interested persons have expressed a desire to establish a fund in the Foundation in the nature of an endowment to provide current income and long-term protection for the operations of the Charity, and the Charity 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 the books of the Foundation and shall be known as the _____ Fund (“Fund”). The Foundation acknowledges receipt of the property listed in schedule “A” attached hereto and made a part hereof as the initial property of the Fund.
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 Charity for inclusion in the fund, such additional property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by the Foundation, 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 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 this Agreement, applied in a manner not inconsistent with said Articles and Bylaws.
3. **Designation of Purpose.** The Fund shall be used for support of the charitable, scientific, or educational purposes of the Charity and its affiliated agencies (if any).
4. **Distributions of Income.** Distributions from the fund shall be in accordance with the spending policy established by the Board of the Foundation and shall be paid and distributed at least annually, or more or less frequently, as the Parties may from time to time agree.
5. **Other Distributions.** Distributions in excess of the Foundation’s spending policy may be made to the Charity 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 the Foundation by the Charity Endowment Advisory Committee (“Committee”), which shall consist of not more than 5 persons appointed from time to time by the Charity. Recommendations of the Committee shall be solely advisory and not binding on the Foundation.
6. **Fees:** The Fund will be assessed fees by the Foundation in accordance with the fee schedule set by the Board of Directors as defined in the Financial Administration Policy of the Foundation from time to time. In the event it is determined it is necessary, in the sole discretion of the Foundation, to employ attorneys or accountants for purposes of determining

distributions, values, or opinion as to the rights and obligations of the Foundation as to the funds described under this Agreement, the Fund shall bear all such reasonable expenses.

7. Exercise of Variance Power.

- (a) This agreement is subject to the Foundation’s authority to vary the terms of the gift. As stated in Article VII, Section 1(g) of the Foundation’s By Laws, the Foundation may *“decide that conditions or circumstances have so changed that compliance with a restriction on a gift, devise or bequest is unnecessary, undesirable, impractical, impossible or inconsistent with the purposes and objectives of the corporation, such restriction may, by the affirmative vote of a majority of the Board of Directors, be varied in a manner that will more effectively serve the corporation’s purposes and objectives.”*
- (b) The Foundation shall promptly notify the Charity of any decision made to exercise the variance power. Notification of the exercise of the power shall be delivered in writing to the last known address of the Charity within 30 days following the Board’s decision. The Foundation shall also notify the Charity if it becomes aware of any other action instituted or proposed by any person to vary the purposes, uses or method of administration of the Fund.
- (c) If the Foundation ceases to be a qualified charitable organization or if the 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 the Charity. If the Charity is not then a qualified charitable organization, said assets shall be distributed in such manner and to such organization or organizations in the San Angelo area as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of the Charity.

8. Definitions and Construction.

- (a) As used in this Agreement:
 - (1) “Qualified charitable organization” means an organization described in section 501 (c)(3), which is other than a private foundation under section 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 the Foundation and that nothing in this agreement shall affect the status of the Foundation as an entity that is a qualified charitable organization. This Agreement shall be interpreted in a manner consistent with this 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 the Foundation.*

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

By: _____
Matt Lewis – President & CEO
SAN ANGELO AREA FOUNDATION

By:
(Authorized signature)

Schedule A

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