

# Fund Terms and Conditions

Community Foundation of West Texas  
www.communityfoundationofwesttexas.org

## Tax Status of Contribution

Funds established at Community Foundation of West Texas are component funds of Community Foundation of West Texas, a Section 501(c)(3) nonprofit organization. Contributions other than cash or marketable securities must first be approved by Community Foundation of West Texas. All contributions to Community Foundation of West Texas funds are treated as gifts to a public charity and are generally tax-deductible, subject to individual limitations. Community Foundation of West Texas does not provide tax or legal advice; we recommend consulting a professional advisor with questions about a gift to Community Foundation of West Texas.

## Variance Power

As required by law, all assets contributed to funds become irrevocable gifts to Community Foundation of West Texas, and legal control and responsibility for the funds rest with Community Foundation of West Texas. All funds established at Community Foundation of West Texas are subject to Community Foundation of West Texas variance power. Variance power gives Community Foundation of West Texas the authority to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if, in the sole judgment of the Community Foundation of West Texas Board of Directors, such restriction or condition becomes unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community served.

## Investment of Assets

In making a gift to Community Foundation of West Texas, donors give up all right, title and interest to the assets contributed. In particular, donors cannot choose investments, investment managers or brokers after their gift has been made. The Board of Directors and investment committee of the Community Foundation of West Texas have the right to make any and all investment decisions regarding gifts received. To realize the lowest possible management costs, the Foundation pools funds for investment purposes. Funds pooled in this manner comprise the Foundation's general investment pool. All income and capital gains or losses will be allocated to the funds on a monthly basis.

A donor may recommend a customized investment approach through an outside investment advisor for funds carrying a balance of at least \$500,000. The Community Foundation of West Texas investment committee must approve the recommended advisor, the advisor's proposed investment strategy and underlying investments.

## Fees and Minimums

There is no set-up fee to open a fund at Community Foundation of West Texas; however specific initial gift minimums must be met. Initial gift minimums vary by fund type. A list of current fees and initial gift minimums is available upon request. The

Community Foundation of West Texas reserves the right to change its fee or minimum policies at any time.

## Role of Advisors

Donors establishing an advised fund may designate any person over 18 years of age to be an advisor on the fund. A fund can have more than one fund advisor but preferably no more than three. If a fund is advised jointly, upon the death of one fund advisor, the remaining fund advisor(s) retains the privileges associated with the fund.

## Successor Advisors

The donor and any fund advisor may designate any person within one generation to be a successor advisor to exercise the privileges and duties of a fund advisor. Successor advisors may assume the privilege to advise the fund only after the deaths or resignations of all initial fund advisors named on the fund. The successor advisor(s) may be required to provide written notification and sufficient proof of the donor's or fund advisor's death prior to assuming the privileges and duties of a fund advisor. Successor advisors may not appoint further successors but may appoint additional fund advisors as long as they are in the same generation as the successor advisor. If the successor advisor is a minor, the Community Foundation of West Texas Board of Directors reserves the right to require that grant recommendations be made by the minor's legal guardian.

All requests to modify or appoint additional advisors and successor advisors to a fund must be communicated to the Community Foundation of West Texas in writing. In addition, a written acknowledgement must be received from the Community Foundation of West Texas confirming that the request has been granted. If the Community Foundation of West Texas has not received the name(s) or an additional advisor(s) or successor advisor(s) to the fund, or other special instructions, in writing, the Community Foundation of West Texas will use the fund's balance to support the Community Foundation of West Texas Community Endowment Fund.

The following fund Advisory Privileges and Fund Relationship Definitions further explain the role of advisors and other interested parties to funds at the Community Foundation of West Texas. These terms correlate to the Fund Agreement forms and will determine the fund's contacts and advisors.

## Fund Relationship and Fund Advisory Privileges Definitions:

**Primary Contact:** One person per fund who should be contacted first for anything concerning the fund. This individual may or may not have fund advisory privileges.

**Fund Advisor:** Individual has full advisory privileges over a fund, including grant recommendations, investment recommendations, naming the fund and appointment of other fund advisors and successor advisors. (This is the highest level of authority.)

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**Secondary Advisor:** Individual also has full advisory privileges over grant recommendations but has no other fund administration advisory privileges. (This is an intermediate level of authority.)

**Fund Representative:** Individual has access to fund information but no fund advisory privileges. (This is the lowest level of authority.)

**Successor Advisor:** The second generation fund advisor; he or she has no advisory privileges until the cessation to act of all initial fund advisors. (Primarily for donor advised funds, committee advised funds and scholarship funds.)

## Fund Spending Policy

The Community Foundation of West Texas recommends a minimum annual distribution rate for all funds. For endowed funds, the Community Foundation of West Texas Board of Directors sets and monitors a required annual distribution rate that is calculated as a percentage of fund assets. This rate is based on 12 trailing quarter balances and is subject to change based on community needs, investment performance and the long-term preservation of endowment funds' principal. An endowed fund must be invested for a minimum of 12 months before the fund's initial annual distribution can be made.

## Grant Disbursement

Grants must be for charitable purposes, and those grants may be recommended to any 501(c)(3) organization or verified charitable entity (e.g. schools, religious institutions) located in the United States. Grants may also be given for charitable purposes to non-501(c)(3) organizations if the charitable expenditure can be verified through a process called expenditure responsibility. Expenditure responsibility is required for any organization not described in IRS Section 170(b)(1)(A), including for-profit companies, private operating foundations and new public charities that do not yet have 501(c)(3) status.

Grant checks sent to organizations are accompanied by a community foundation letter specifying the name of the fund and the fund advisor's name(s) unless requested otherwise by the donor or fund advisor and as approved by the Community Foundation of West Texas. The fund advisor's address may also be included on all letters if requested by the fund advisor. Approved grants are typically sent within 10 working days. Grants made from funds at the Community Foundation of West Texas are issued on checks with the name and logo of the Community Foundation of West Texas.

The Community Foundation of West Texas shall assume responsibility for check writing, bookkeeping, investment management, tax reporting, auditing and evaluation of projects, and for making available to the fund advisors and fund representatives reports of fund income, expenses and grantmaking, as appropriate.

## Restrictions on Grants

In compliance with the Internal Revenue Code, grants are not permitted to individuals, for non-charitable purposes; for political

contributions or to support political campaign activities; or for any purpose that would provide benefits, goods or services to a donor to the fund, the fund's advisor(s) or other related parties. A fund advisor is subject to IRS penalties if the fund's donor(s), advisor(s) or other related parties receive benefits, goods or services in connection with a grant recommendation. This includes grants to satisfy pledges made by any person including a fund advisor and non-deductible (or partially tax-deductible) memberships, event tickets, sponsorships, registration fees in tournaments and cause-related marketing activities. Grants are not allowed to private non-operating foundations. Please contact the Community Foundation of West Texas if you have questions about the exclusion of benefits from grant recommendations and/or multiple-year payments.

## Payments from an Advised Fund

The Community Foundation of West Texas does not permit expense reimbursements, loans, compensation or other similar payments from an advised fund to any donor, fund advisor or related party. All expenses must be paid by the Community Foundation of West Texas directly after appropriate review of the expenses and their payees, and all expenditures must be preapproved by the Community Foundation of West Texas prior to being incurred. The expense submitted for review must be charitable in nature or support a charitable purpose.

## Fundraising Policy

On rare occasions, the Community Foundation of West Texas may consider permitting a fund to raise money. All fundraising activities must be pre-approved by the Community Foundation of West Texas. Fund advisors must allow at least 30 days for approval. Use of the Community Foundation of West Texas name on any fundraising material is expressly prohibited without prior written approval by the Community Foundation of West Texas. The Community Foundation of West Texas cannot reimburse the donor, fund advisor or related parties for expenses related to fundraising activities. All contributions in support of the fund must be made payable to the Community Foundation of West Texas with the name of the fund in the memo line. The Community Foundation of West Texas is not responsible for the success of fundraising activities.

## Memorial Funds

A memorial fund can be established in honor of someone who has passed away. Requests for donations in the name of the deceased to the Community Foundation of West Texas should use the following language in solicitations for gifts: "Funds raised will be added to the [insert name] Fund at the Community Foundation of West Texas. All checks must be made payable to Community Foundation of West Texas with [insert name] Fund in the memo line."

Names of donors to memorial funds will be disclosed to memorial fund advisors; however, specific gift amounts will not.

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## Scholarship Funds

For any scholarship fund established at the Community Foundation of West Texas, the scholarship selection committee must be appointed by the Community Foundation of West Texas; however members may be recommended by the donor. The donor and parties related to the donor may serve on the selection committee but they cannot directly or indirectly control the committee. As required by law, the scholarship selection process must be approved annually by the Community Foundation of West Texas Board of Directors. The Community Foundation of West Texas disburses scholarship funds to the institution the recipient attends and will not disburse a grant to a specific individual.

## Designated Funds

Designated funds can be established for the benefit of up to five qualified public benefit organizations. Designation must take place at the time that the contribution is made. If a designated organization ceases to exist or dramatically changes its charitable purpose, the Community Foundation of West Texas will use its variance power to find a similar organization which matches the donor's intent.

## Fund Inactivity

If a fund advisor is no longer willing or able to advise the fund's distribution, and no successor advisor is named, the Community Foundation of West Texas Board of Directors will assume responsibility for grantmaking. Inactivity is when no grant recommendations or gifts are received for a period of two consecutive years and fund advisor(s) cannot be contacted. The Community Foundation of West Texas staff will attempt to contact the fund advisor(s) at least three times via certified mail and allow 30 days for a response. If contact cannot be made, the Community Foundation of West Texas's Board of Directors will advise an annual payout to support the community grantmaking program in accordance with the Community Foundation of West Texas's spending policies.

## Fund Closure

A fund advisor may recommend closing a non-endowed fund by granting up to 100% of the fund balance to a qualified charitable organization, including any of the Community Foundation of West Texas funds (e.g., field of interest funds, endowment funds, operating funds). Such recommendations must be received in writing and, if approved, funds will be disbursed in accordance with the Community Foundation of West Texas current grantmaking policies and applicable laws and regulations. Endowed funds are permanent and cannot be closed.

## Conflict of Terms

In the event of an inconsistency between these terms and conditions and any terms and conditions appearing elsewhere in connection with any fund, these terms and conditions, as interpreted by the Community Foundation of West Texas, shall govern, and the Community Foundation of West Texas reserves

the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of any fund at the Community Foundation of West Texas or to comply with applicable law.

## Frequently Asked Questions

### What is a donor advised fund?

A donor advised fund is not a separate legal entity like a trust or a corporation. It is a fund defined by the IRS that a sponsoring charity, like the Community Foundation of West Texas, creates through a written agreement with a donor. The donor contributes assets to the Community Foundation of West Texas which agrees to treat those assets as a separate fund on its books, while the donor retains the privilege of recommending charitable grants from the fund.

### Who owns the assets once the gift is made and the fund is opened?

The law requires the Community Foundation of West Texas to make clear in the agreement, and to obtain the donor's written acknowledgement, that the assets in a donor advised fund are the property of the Community Foundation of West Texas and that the Community Foundation of West Texas has discretion and control over the use and investment of the donor advised fund's assets.

### Why is discretion and control an issue?

In order for a donor to take advantage of the tax benefits that flow from a charitable gift, the gift has to be complete – that is, the donor has to part with control over the donated assets. The appearance of donor control could put the donor's tax deduction in jeopardy. Therefore, fund advisors cannot make pledges on behalf of the fund and can only make non-binding recommendations about grants; they cannot control when and how the Community Foundation of West Texas will make grants nor control decisions about which grantees will receive funding.

### What are the limits on donor benefits in connection with donor advised fund grants?

Donors, fund advisors and related parties (such as family members or business interests) may receive only "incidental" benefits from a grant or investment of a donor advised fund. If a donor, fund advisor or related party receives more than an incidental benefit in connection with a donor advised grant, the IRS will assess a penalty of 125% of the amount of the improper benefit. The penalty may be assessed against either the person who recommended the grant or the person who received the benefit. (There is a separate penalty if a donor, fund advisor or related party receives a direct distribution from the donor advised fund, such as compensation or an expense reimbursement.)

Please contact the Community Foundation of West Texas at (806)762-8061 if you have questions about these terms and conditions.