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RCD Use Only: PHRCD #: _____
Name: _____
Date: _____
Other: <u>Fiscal Sponsorship Agreement</u>

Fiscal Sponsorship Agreement

Program Account Name: _____
Account #: _____ **Date:** _____

Program Manager Name: _____
Address: _____

Email: _____ **Phone Number:** _____

Please initial each page certifying that you agree with and understand the terms in this Fiscal Sponsorship Agreement ("Agreement"). Sign the bottom portion of the document, and then return the document in full to Prairie Hills Resource Conservation and Development ("PHRCD") to the address above after your program application has been approved. This Agreement must be signed and returned to PHRCD before your program commences operations. A PHRCD signed copy of this Agreement will be returned to you after our offices processes the Agreement. PHRCD relies on your guarantee that you understand and will comply with all of the provisions in this Agreement. The Agreement is designed both to protect the program and PHRCD and ensure compliance with Internal Revenue Code ("Code") section 501(c)(3). Please be sure you fully understand all of these provisions because they are critical to the successful operation of your program. If you do not understand any of these provisions, please call us to discuss or consult with an attorney. Your signature on this Agreement constitutes acknowledgment that you are familiar with, understand, and shall comply with all provisions.

This Fiscal Sponsorship Agreement ("Agreement") is made by and between Prairie Hills Resource Conservation and Development ("PHRC D") and ("Program Manager"). PHRC D is a Illinois n o n p r o f i t corporation located in Macomb, Illinois, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code ("IRC"), classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). Program Manager is an individual resident of the state of _____.

RECITALS

A. The PHRC D Board of Directors has approved the establishment of a restricted fund to receive donations of cash and other approved types of property designated for support of the program known as _____ (the "Program") and to make disbursements in furtherance of the Program's mission as described in its Program Proposal & Application to _____

Currently, the principal office of the Program is located in _____, _____

B. PHRC D desires to act as the fiscal sponsor of the Program, by receiving assets and incurring PHRC D approved liabilities identified for the purposes of the Program and using them to pursue those purposes, which PHRC D's Board has determined will further PHRC D's charitable and educational goals. Program Manager desires to manage the Program on behalf of PHRC D, subject to PHRC D's discretion and control.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Term of Agreement. On _____ (the "effective date"), PHRC D shall assume operation of the Program, which operation shall continue in effect unless and until terminated by mutual agreement or for violation of PHRC D policies and requirements as provided herein.

2. Program Activities and Sponsorship Policies. All community programs, public information work, fundraising events, processing and acknowledgment of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement of Program funds (including grants), and other activities conducted by the Program shall be the ultimate responsibility of PHRC D and shall be conducted in the name of PHRC D, beginning on the effective date.

a. Unless otherwise agreed, and subject to their consent, all personnel to be compensated for working on the Program shall become at-will employees of PHRC D on the effective date and shall be subject to the same personnel policies and benefits as are required by law to apply to all program, non-corporate level employees of PHRC D. If properly classified, others may work on the Program at will as independent contractors pursuant to a written service agreement. However, establishing a Program at PHRC D neither results in nor guarantees anyone's employment by or compensation from PHRC D, and no express or implied assurance of employment or compensation shall be offered to anyone by PHRC D or by Program Manager in connection with any donation made to PHRC D or any volunteer service rendered to support the Program. PHRC D has sole discretion, at all times, to determine the terms and conditions of anyone's employment or compensation in connection with the Program.

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b. The parties shall abide by the Active Charitable Program Operations Manual of PHRCDC (the "Manual") set forth as the attached Exhibit 1 (hereby incorporated by reference in this Agreement and including the subsidiary policies, procedures, and forms cited in the Manual), which PHRCDC may amend from time to time in its sole discretion with advance written notice to Program Manager and which include administrative fees, interest, and charges for extra services, to be paid to the general fund of PHRCDC from the restricted fund described in Paragraph 4 below. Such fees, interest, and charges are necessary to compensate PHRCDC for its services administering the Program, and thus become unrestricted rather than restricted assets when paid. The Manual indicates how PHRCDC provides financial information to the Program on the status of the restricted fund and the timing of reports due from Program Manager to PHRCDC on the charitable operations of the Program, and covers many other PHRCDC policies and requirements.

c. Unless otherwise agreed, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Program shall be the property of PHRCDC, held for the charitable purposes of the Program.

d. The Program may solicit gifts, contributions, and grants to PHRCDC identified as in support of the purposes of the Program. The Program's choice of funding sources to be approached, and the text of the Program's fundraising materials, are subject to PHRCDC's prior written approval and shall include an express disclosure of PHRCDC's variance power under Paragraph 4 below. All grant agreements, pledges, or other commitments with funding sources to support this Program shall be executed by PHRCDC.

e. Programs must not cause PHRCDC to be exposed to any liability for injuries or damages as a result of any: (a) negligent act or omission by a Program Manager or any person related to a Program Manager or subject to his or her direction or control; (b) violation of statute, ordinance, rule or regulation by a Program Manager or any person related to a Program Manager or subject to his or her direction or control; or (c) other wrongful act or omission by a Program Manager or any person related to a Program Manager subject to his or her direction or control. Program Managers must disclose to PHRCDC all proposed activities of a Program so that PHRCDC's insurance advisor may determine whether special insurance policies or riders to existing policies are warranted or required. This is part of the ongoing obligation to communicate regularly with PHRCDC as to approved and proposed operations.

If a Program Manager fails to adhere to any of the provisions set forth above, he or she may cause PHRCDC to be exposed to liability, to incur federal corporate income tax for unrelated business taxable income, and/or be subject to legal fees and litigation expenses. Therefore, Program Manager agrees to indemnify and reimburse PHRCDC under Paragraph 7 below in the event of a breach by Program Manager of any of the provisions in the Agreement, including, but not limited to, those set forth above in the immediately preceding paragraph.

3 Delegation. As of the effective date, management of the activities of the Program is delegated by the PHRCDC Board of Directors to the Program Manager, subject to the ultimate direction and fiduciary responsibility of the PHRCDC Board.

a. Program Manager is the only person authorized to represent the Program under this Agreement. If Program Manager wishes to designate an assistant or replacement person to represent the Program, any such assistant or replacement Program Manager must be approved in writing by PHRCDC in advance and must agree in writing to be bound by this Agreement.

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b. The Program has created an Advisory Committee (the "Committee") to advise and oversee the Program, which is also subject to the ultimate authority of the PHRCD Board. Acting in their individual capacities, the members of the Committee serve as a subordinate body to the PHRCD Board to assist with the fulfillment of the purposes of the Program. Those participating on the Committee do not serve as representatives or agents of any funding source, employer, or any party other than PHRCD.

4 Restricted Fund / Variance Power. Beginning on the effective date, PHRCD shall place all gifts, grants, contributions, and other revenues received by PHRCD for the purposes of the Program into a restricted fund to be used for the sole benefit of the Program's mission as that mission may be defined from time to time with the approval of PHRCD. Neither party shall spend or otherwise obligate PHRCD to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. PHRCD retains the unilateral right to spend such funds so as to accomplish the purposes of the Program as nearly as possible within PHRCD's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund will be reported as the income of PHRCD on PHRCD's financial statements and tax returns.

a. It is the intent of the parties that this Agreement be interpreted to provide PHRCD with variance powers necessary to enable PHRCD to treat the restricted fund as PHRCD's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB).

b. Because the restricted fund is held under the charitable trust doctrine for the purposes of the Program as understood by and with funding sources, the parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of PHRCD unrelated to the Program.

c. Programs cannot accept funds, directly or indirectly, from Program Managers, any relative of the Program Manager (by blood, marriage, or adoption), any business with a 35% or more interest owned by the Program Manager or relative, or any person who receives payment or reimbursement from the program. Moreover, any donor to a PHRCD program cannot receive compensation, reimbursement or any other form of payment from PHRCD in connection with the program to which they have donated. Nor shall any donor advise or expect to advise PHRCD or make recommendations to PHRCD as to the use of their donated funds after making a donation.

5 Performance of Charitable Purposes. All of the assets received by PHRCD under the terms of this Agreement (net of fees, interest, and charges) shall be devoted to the purposes of the Program, within the tax-exempt purposes of PHRCD. Expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by PHRCD. The parties shall not use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3). PHRCD will determine, based on the advice of tax-exempt legal counsel, whether the restricted fund

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is or is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.

6 Termination. This Agreement shall terminate when PHRC D determines that the objectives of the Program can no longer reasonably be accomplished by PHRC D. If the objectives of the Program can still be accomplished but either the Program Manager or PHRC D desires to terminate PHRC D's fiscal sponsorship of the Program, the following understandings shall apply.

a. Either PHRC D or the Program Manager may terminate this Agreement on 60 days' written notice to the other party, so long as another nonprofit organization acceptable to both parties is found that is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under Section 509(a) (a "Successor"), and is willing and able to sponsor the Program. (As used in this Paragraph 6, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the Program and has the financial and administrative capacity to competently manage the Program.)

b. The balance of assets in PHRC D's restricted fund for the Program, together with any other tangible and intangible assets held and liabilities incurred by PHRC D in connection with the Program, shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required.

c. If the Committee has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as it has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met.

d. If no Successor acceptable to both parties is found within a reasonable time, PHRC D may dispose of the Program assets and liabilities in any manner consistent with applicable tax and charitable trust laws.

e. Either party may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving 30 days' written notice to the other party, and any Program assets and liabilities shall be disposed of at the end of the notice period in a manner consistent with the provisions stated above in this Paragraph.

7. Indemnification. Program Manager acknowledges that Program Manager will be personally liable for any losses incurred by PHRC D as a result of Program Manager's acts or omissions arising under this Agreement, as follows. As a condition of Program sponsorship, Program Manager hereby agrees to defend, indemnify, and hold harmless PHRC D, its officers, directors, employees, and agents from and against any and all obligations and liabilities of the Program, including any deficit in the restricted Program fund, and any claims, liabilities, losses, costs, taxes, damages, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from any act or omission of Program Manager or his or her agents in connection with the Program, whether before or after termination of this Agreement. The provisions of this Paragraph shall survive any termination of this Agreement.

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8. Miscellaneous. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of PHRCDD to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights. Except as expressly stated herein, this Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and neither party shall represent to anyone that any such relationship exists.

9. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the effective date set forth in Paragraph 1 above.

Prairie Hills Resource Conservation and Development

By: _____ Dated: _____

David King, Executive Director

By: _____ Dated: _____

_____, Program Manager (Printed)

Initials: _____