

**DRAFT**  
**PASS-THROUGH FUND AGREEMENT**  
**BETWEEN**  
**NORTH VALLEY COMMUNITY FOUNDATION**  
**AND**  
**WILDFLOWER OPEN CLASSROOM**

THIS AGREEMENT is made on 11/1/10 by and between **NORTH VALLEY COMMUNITY FOUNDATION**, a California nonprofit public benefit corporation (the “Foundation”), and **WILDFLOWER OPEN CLASSROOM** (the “Agency”).

The Agency desires to create a charitable Pass-through Fund with the Foundation; and the Foundation, as a California nonprofit public benefit corporation exempt from taxation under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in section 170(b)(1)(A)(vi) of the Code, is an appropriate institution within which to establish such a charitable fund.

The Foundation is willing and able to create this fund as an Pass-through Fund, subject to the following terms and conditions:

- 1. NAME OF THE FUND.** There is hereby established in the Foundation, and as a part thereof, a fund designated **Wildflower Open Classroom Fund** (“the Fund”) to receive and administer gifts, in whatever form of money or property.
- 2. PURPOSE.** The primary purpose of the Fund shall be to provide financial support to the nonprofit organization called, Wildflower Open Classroom, within the scope of Code section 170(c)(1) or (2) that is consistent with the exempt purposes of the Foundation. In the event that the Agency should (i) no longer be an organization described in Code section 170(c)(1) or (2), (ii) become subject to bankruptcy proceedings under state or federal law, or (iii) liquidate and dissolve or otherwise cease to exist, then the assets of the Fund shall be applied as described in paragraphs 5, 6 and 7 below.
- 3. GIFTS.** The Agency transfers irrevocably to the Foundation the following property to establish the Fund. Subject to the right of the Foundation to reject any particular gift, any person whether an individual, corporation, trust, estate, or organization other than the Agency (hereinafter referred to as “Donor” or “Donors”) may make additional gifts to the Foundation for the purposes of the Fund by a transfer to the Foundation of property acceptable to the Foundation in whole or in part for the Fund. All gifts, bequests, and devises to this Fund shall be irrevocable once accepted by the Foundation. Gifts from Donors will be retained by the Foundation and shall not be subject to the provisions for return of principal set forth in Paragraph 12 below.

**INITIAL GIFT: TBD**

**4. DISTRIBUTION.** One hundred percent (100%) of the total Fund balance, net of the fees and expenses set forth in paragraph 11, may be committed, granted, or expended annually only for purposes described in Code section 170(c)(1) or (2) that are consistent with the exempt status and purposes of the Foundation. However, annual distributions may be suspended by the Foundation if in its opinion any such distributions would be composed of any of the principal amount of gifts to the Fund.

**5. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Foundation shall hold the Fund, and all contributions to the Fund, subject to the provisions of the applicable California laws and the Foundation's Articles of Incorporation and Bylaws. The Foundation shall monitor the distribution of the Fund to ensure it is used exclusively for charitable or other exempt purposes (within the meaning of Codes section 170(c)(1) or (2)). If any gifts to the Fund are received and accepted by the Foundation, but subject to any conditions or restrictions as to the use of the gift or income therefrom, these conditions or restrictions will be honored, subject, however, to the authority of the Foundation to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Foundation unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Foundation or needs of the community served by the Foundation. This variance power is further explained in US Treasury Regulations Section 1.170A-9(e)(11)(v)(B). No distribution shall be made from the Fund to any individual or entity if such distribution will in the judgment of the Foundation endanger the Foundation's Code section 501(c)(3) status.

**6. CONDITIONS FOR ACCEPTANCE OF FUNDS.** The Agency agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject to, the terms and conditions of the Articles of Incorporation and Bylaws of the Foundation as from time to time amended. The Fund shall at all times be subject to various terms and conditions concerning presumption of a Donor's intent; variance from a Donor's direction; and amendments agreed upon by Agency and Foundation.

**7. CONTINUITY.** The fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated, the Foundation shall devote any remaining assets in the Fund exclusively for charitable or other exempt purposes that: (a) are within the scope of the charitable or other exempt purposes of the Foundation's Articles of Incorporation and Bylaws; and, (b) most nearly approximate, in the good faith opinion of the Foundation, the original purpose of the Fund.

**8. NOT A SEPARATE TRUST.** The Fund shall be a component part of the Foundation. All money and property in the Fund shall be held as general assets of the Foundation and not segregated as a separate trust.

**9. ACCOUNTING.** The receipts and disbursements of this Fund shall be accounted for separately and apart from those of other gifts to the Foundation. However, the Fund

shall be invested as part of the pooled investments of the Foundation, and shall receive a proportionate share of income and realized and unrealized capital gains or losses. Generally Accepted Accountancy Principals require that contributions from the Agency to the Fund are to be reported as assets on the financial statements of the Agency and as liabilities on the financial statements of the Foundation. Contributions from other Donors are reported as assets on the books of the Foundation and the Agency's beneficial interest is disclosed on the financial statements of the Agency. The Foundation separately accounts for contributions from the Agency and contributions from other Donors, but combines said sums for public information regarding the Fund.

**10. INVESTMENT OF FUNDS.** The Foundation shall have all powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest, and reinvest the Fund and the power to commingle the assets of the Fund with those of other funds for investment purposes.

**11. COSTS OF THE FUND.** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs of the Foundation. Those costs annually charged against the Fund will be two percent (2%) of the total fund balance. Any costs to the Foundation in accepting, transferring, or managing property donated to the Foundation for the Fund shall also be paid from the Fund.

**12. PROOF OF DETERMINATION LETTER.** It is understood and agreed that ~~Feeding Nations Through Education~~ Wildflower Open Classroom will receive its determination letter from the IRS, articulating its 501(c)3 status no later than 27-months from the signing of this agreement. If a 501(c)3 determination letter is not presented to NVCF than all assets shall be directed to another 501(c)3 with a comparable mission and geography per the recommendation of the Fund Advisors.

The undersigned, as representatives of the Agency, have executed this Agreement, and the Foundation has approved it as indicated by the signature below.

By: \_\_\_\_\_  
Fund Advisor Date

By: \_\_\_\_\_  
Fund Advisor Date

Approved by the CEO with the authority vested in her by the Board of Directors of North Valley Community Foundation on **TBD**.

North Valley Community Foundation

By: \_\_\_\_\_  
Alexa Leigh Valavanis, CEO

\_\_\_\_\_  
Date

*Advised Fund Agreement Between North Valley Community Foundation and WOCF*

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