

This document is for information purposes only and is not intended as legal advice. Other types of fund agreements are also available and may be more suitable, depending upon the intent of the donor.

General Draft _____ Fund Agreement

This Agreement, made and entered into this ___ day of _____, 2019, by and between The Community Foundation of Shelby County, a not for profit Ohio corporation whose principal office is located in Sidney, Shelby County, Ohio (the “Foundation”), and *DONOR NAME* (the “Donor”).

Recitals

WHEREAS, the Foundation carries on a philanthropic program in Shelby County, Ohio, and is empowered to receive, hold, handle, administer, invest and reinvest money and property of all kinds received by gift, devise, bequest or appointment for charitable, scientific, educational and similar purposes more particularly described in the Foundation’s Articles of Incorporation;

WHEREAS, the Foundation is a tax-exempt public foundation under Section 501 (c)(3) of the United States Internal Revenue Code; and

WHEREAS, the Donor is interested in furthering the philanthropic program of the Foundation by making a gift to the Foundation for the purpose of creating a restricted (unrestricted) endowment fund (the “Fund”);

NOW THEREFORE, the parties agree as follows:

1. Name of the Fund

The name of the Fund shall be the *DONOR PROVIDED*. So far as practicable, the Foundation shall conduct investment activities of the Fund in that name.

2. Receipt of the Fund

The Fund shall be a Component Fund of the Foundation. It shall be considered established upon the acceptance of this Agreement by the Board of Trustees of the Foundation and the receipt of a contribution(s) as set forth on the attached Exhibit “A” (“Initial Donation”), which are deemed acceptable in accordance with the Gift Acceptance Policy. All contributions to The Community Foundation, which are designated in writing for the Fund, shall constitute the Fund.

Each Donor by making a contribution to the Foundation for inclusion in the Fund acknowledges the Fund shall be managed in accordance with the Articles of Incorporation and Code of Regulations of the Foundation together with policies and resolutions of the Foundation, each as from time to time may be amended.

The Initial Donation, and any subsequent gifts to the Foundation which are applied to the Fund, shall be irrevocable and the Foundation shall have exclusive control over assets contributed.

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3. Investment of the Fund

The Initial Donation, together with any additional gifts, shall constitute the Fund principal (“Principal”). The Principal shall be invested and reinvested as provided for under this Agreement and the governing instruments of the Foundation.

The Foundation may retain the services of an investment advisor, such as a trust department of a bank, a broker, or such other professional, to advise the Foundation on the investment of the Fund.

4. Continuity

(Endowed Funds)

It is intended that the Fund shall be an endowment fund as defined by the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”) and subject to the Foundation’s Spending Policy. It shall continue so long as money or property is available for its purposes.

(Quasi-endowed Funds)

It is intended the Fund be a Quasi-Endowment Fund and continue so long as money or property is available for its purposes. Total Return and Principal may be expended. Portions of the Fund may be distributed in such a manner and at such a time as the Board approve.

(Non-endowed Funds)

It is intended that the Fund will continue indefinitely as a Non-Endowed Fund so long as money or property is available for its purposes. The Board of Trustees shall have discretion regarding amounts disbursed (*unless a disbursement amount is defined within the agreement*).

(If a Restricted use fund:)

5. Purpose

The purpose of this Fund shall be to provide monies for_____.

*** (a charitable organization, cause or activity in the community, examples:

- a. one or more named organizations,
- b. an identified community need such as children, health care, the arts, environment,
- c. etc.)

Should the above cease to exist, grants shall benefit: _____.

(If Community Granting fund:)

5. Purpose

The purpose of this Fund shall be to award grants at the discretion of the Board of Trustees to charitable organizations serving the residents of the service area of the Community Foundation of Shelby County.

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6. Separate Accounting

The Fund shall be considered a separate fund. For accounting purposes, all assets of the Fund shall be separately identified from the general assets of the Foundation or any other designated funds.

7. Investment and Operating Expenses

The Foundation shall bear all Ordinary and Necessary Expenses of administering the Fund and pay all taxes, if any, relating to the Fund. The Fund shall bear its share of Foundation administrative and investment expenses in accordance with the Foundation's fee schedule. Expenses over and above Ordinary and Necessary Expenses shall be paid directly by the Fund.

8. Additional Authority

The Foundation is authorized to adopt such regulations, procedures, and other administrative provisions to carry out the purposes of the Fund or as may be required by the Internal Revenue Service so as not to jeopardize the Foundation's status as a tax-exempt public foundation.

The Foundation is further authorized to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified charitable organizations, if in their sole judgment (without the approval of any trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the service area.

9. Irrevocability.

The Initial Donation, and any subsequent gifts to the Foundation which are applied to the Fund, shall be irrevocable and the Foundation shall have exclusive legal control over the assets contributed.

10. Notices

Any notice hereunder must be in writing and delivered personally; by United States mail, registered or certified, return receipt requested; United States Express Mail, Federal Express, or equivalent courier service; and shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as set forth below, or as may be designated in writing, from time to time:

The Community Foundation of Shelby County
100 S. Main Ave., Ste. 202
Sidney, Ohio 45365-2771

*Donor
Address supplied*

11. Binding Effect

This Agreement shall be binding and inure to the benefit of the Donor and the Foundation, or their respective personal representatives, executors, administrators, successors, and assigns, as applicable.

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12. Entire Agreement

This Agreement represents the entire agreement between the parties, and supersedes all other understandings or agreements, if any.

13. Non-Waiver

Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall a waiver or relinquishment of any right or power hereunder, at any time, be deemed a waiver or relinquishment of such right or power at any other time or times.

14. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall be one and the same instrument.

15. Severability

The validity or enforcement of any particular provisions of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable were omitted.

16. Capitalized Terms

All capitalized terms that are not herein defined shall have the same meaning as defined in the Foundation's Glossary of Terms, which may be amended from time to time.

17. Governing Law

This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Ohio.

IN WITNESS THEREOF, the parties have hereunto set their hand this ____ day of _____, 2019.

THE COMMUNITY FOUNDATION OF SHELBY COUNTY

BY: _____
Marian F. Spicer, Executive Director

DONOR:

