



**BILLINGS COMMUNITY FOUNDATION
AGREEMENT TO ESTABLISH A DONOR-ADVISED FUND (7-13-2017)**

This agreement "Agreement" is made this ____ day of _____, 20____ to create the _____ Fund, by _____ and between _____ (hereinafter referred to as the "Donor") and The Billings Community Foundation, a Section 501(c)(3) tax-exempt organization (Hereafter referred to as "The Community Foundation").

With this Agreement the Donor is delivering to The Community Foundation the following _____.

This donation constitutes an irrevocable gift upon acceptance by The Community Foundation and the following terms and conditions apply:

- 1. **Name of Fund:** Whereas, the Donor(s) desires to establish, and The Community Foundation is willing to hold and administer, a charitable contribution which shall be established on the books of The Community Foundation and be known as:

Any recipient of benefits from this Fund shall be advised that such benefits are from this Fund unless the Donor, in writing, requests that grant(s) not be identified from the Fund.

- 2. **Fund Type:**

____ Endowed – intended to last in perpetuity and limits the amount available to be given each year to ____%. Administrative Fees for non-endowed funds currently have a 0.75% annual fee which is charged quarterly based on the average ending balance of the prior 4 quarters. These fees are subject to the attached administrative fee schedule which does not include investment management fees.

____ Non-endowed – the full corpus is available for grants. Administrative Fees for non-endowed funds currently have a 0.75% annual fee which is charged quarterly based on the average ending balance of the prior 4 quarters. These fees are subject to the attached administrative fee schedule which does not include investment management fees.

3. **Initial Contribution:** The Donor has transferred and delivered to The Community Foundation the gift described above and made a part of this Agreement. The Fund shall include this initial gift and other such donations as may from time to time be transferred to and accepted by The Community Foundation for inclusion in the Fund and all undistributed income from the donation.

4. **Purposes:** _____

(The Donor may designate a particular purpose).

5. **Investments:** The investment of the Fund shall be directed by the BCF Investment Committee with advice from the Donor and may be pooled with other donor assets. For Endowed Funds, the investments will be managed by the BCF investment manager and subject to the related management fees, unless the donor advises the use of another investment manager. Any other manager will have to comply with the BCF Investment Policy and be approved by the BCF Investment Committee. For Non-Endowed Funds, the BCF Investment Committee will provide a list of investment options and will direct investments of the Fund with the advice of the donor. Recommended changes in the investment of Funds shall be provided in writing to the BCF Investment Committee and donors shall be limited to six such recommendations per year. The diversity of investments in Non-Endowed Funds shall be subject to the Federal and State of Montana UPMIFA rules. Any time the Investment Committee follows donor recommendations for specific investments, the donor is reminded that past performance is no guarantee of future results.

6. **Distributions:** Distributions from the Fund of the net income or principal or both, shall be made at such times, in such amounts, in such ways and for such purposes as The Community Foundation shall determine with advice from the Donor or his/her designee(s), subject to Section (7) below.

7. **Grant Recommendations and Designation:** The Donor may submit recommendations to The Community Foundation with respect to grant distributions. Recommendations with respect to distributions made by the Donor or his/her designee(s) are solely advisory and The Community Foundation is not bound by any such recommendations. The Donor may recommend to The Community Foundation the revocation of any designation of an Advisor made by the Donor. Any and all such designations or revocations made by the Donor shall be in writing and become effective when received and approved by The Community Foundation. Grant recommendations received from the Donor or his/her designee shall be for awards of \$100.00 or more and for grants to organizations with a current 501(c)(3) status with the Internal Revenue Service. Recommendations for grant distributions shall be forwarded in writing to The Community Foundation on a Donor Information Form supplied by The Community Foundation.

8. **The Fund as Component of the Foundation:** It is intended that the Fund be a component part of The Community Foundation and not a separate trust, and that nothing in this Agreement shall affect the status of The Community Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as an organization which is not a private foundation within meaning of Section 509(a) of the Code. This Agreement shall be interpreted to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Community Foundation is authorized to amend this

Agreement to conform to the provisions of any applicable law or government regulation in order to carry out the purposes of the Fund. References herein to provisions of the Internal Revenue Code of 1986, as amended, shall be deemed references to the corresponding provisions of any future Internal Revenue Code.

9. **Primary Contact Information:** The chair of the Advisory Committee is the designated point person for The Community Foundation. Unless otherwise noted, the chair receives statements and can make grant recommendations. The current chair is as follows:

Advisory Committee Chair

10. **Advisory Committee and Successor Advisors:** During his, her or their lifetimes(s), the Donor(s) shall serve as Advisor(s) to the fund. In the event the Donor(s) becomes unable or unwilling to serve, then the person or person(s) listed below shall serve as Successor Advisor(s) to the Fund during his, her, or their lifetimes. Each Advisor shall serve in an advisory capacity only, in accordance with the policies established by The Community Foundation for Donor Advised Funds. Further, any Successor Advisor(s) may designate his, her, or their replacement Successor Advisor(s).

Advisory Committee Names and Permissions (Check all that apply):

Reviews Account Requests/Makes Grants Receives Statements

Reviews Account Requests/Makes Grants Receives Statements

Successor Advisors to be added upon the death of the last surviving member of the Advisory Committee:

To the extent that the Advisor(s) shall resign, die or become legally incapacitated without having appointed his, her or their Successor Advisor(s), no Successor Advisor(s) shall succeed to his, her or their Advisor(s) status.

In the event that a Successor Advisor(s) fails to recommend to The Community Foundation other Successor Advisor(s) or should they be unable or unwilling to serve, then at the expiration of 2 years or upon the event that no designated Advisor(s) set forth herein, shall be serving as Advisor(s), the Fund shall become part of the general Endowment of The Community Foundation unless Section 10 below has been completed. If Section 10 has not been completed, the Fund shall become a part of the general Endowment of The Community Foundation upon the occurrence of the event or as soon as administratively feasible thereafter. Section 9 may be amended at any time in the future by written mutual agreement of both the Donor and The Community Foundation.

11. **Fund Term:** At the time when all Advisors and Successor Advisors have passed away the Donor directs The Community Foundation to:

____ Transfer the Fund to The Community Foundation’s Unrestricted Funds to meet the changing needs of the communities it serves.

____ Transfer the Fund to the Field of Interest of The Community Foundation

____ Distribute the Fund in its entirety to the qualified 501(c)(3) Charitable Organization

____ Transfer the Fund to The Community Foundation Endowment Fund

12. This Agreement shall be binding upon the Donor and The Community Foundation, and their respective successors and assigns.

13. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.

14. If suit is brought, or if an attorney is retained by either party to this Agreement to enforce the terms of the Agreement, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney’s fees, court costs, arbitration costs and other related expenses incurred.

15. Except as otherwise set forth herein, this instrument contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below:

BY: DONOR(S):

This agreement and contribution is accepted by:

BILLINGS COMMUNITY FOUNDATION

BY: _____
(Name and Title, Its duly authorized agent)

To be administered in accordance to the above terms on this ____ day of _____, 20_____.